SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 413.

THE UNITED STATES, PETITIONER,

vs.

MORRIS WHITRIDGE AND RICHARD J. WHITE, TRADING AS WHITRIDGE, WHITE & COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

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C. 33582.
F. 4368-98.

Certified record.—Transcript of record.

United States circuit court of appeals, fourth circuit.

WILLIAM F. STONE, COLLECTOR OF CUSTOMS FOR THE district and port of Baltimore, Maryland, appellant,
versus
MORRIS WHITRIDGE AND RICHARD J. WHITE, TRADING as Whitridge, White & Co., appellees. } No. 518.

Appeal from the circuit court of the United States for the district of Maryland.

Record filed October 27th, 1903.

Clerk's office, U. S. circuit court of appeals, fourth circuit. Henry T. Meloney, clerk, Richmond.

1 Transcript of record.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit, in and for the district of Maryland, begun and held at the court-house in the city of Baltimore, on the first Monday of April, being the sixth day of the same month, in the year of our Lord one thousand nine hundred and three.

Present: The Honorable Thomas J. Morris, judge of the Maryland district; John C. Rose, esq., attorney; John F. Langhammer, esq., marshal; James W. Chew, clerk.

Among other were the following proceedings, to wit:

WILLIAM F. STONE, COLLECTOR OF CUSTOMS for the district and port of Baltimore, Maryland,
versus
MORRIS WHITRIDGE AND RICHARD J. WHITE, trading as Whitridge, White & Company.

Appeal of William F. Stone, collector, from the decision of the Board of U. S. General Appraisers.

Filed 26th April, 1902.

In the circuit court of the United States in and for the district of Maryland.

WILLIAM F. STONE, COLLECTOR OF CUSTOMS, DISTRICT of Baltimore, Md.,
vs.
MORRIS WHITRIDGE AND RICHARD J. WHITE, trading at Whitridge, White & Co. } Petition.

To the honorable the judge of said court:

2 William F. Stone, collector of customs for the district and port of Baltimore, Maryland, hereby appeals to your honorable court for a review of a decision of the Board of the United States Gen-

eral Appraisers, dated March 29th, 1902 (General Appraisers' decision No. 5110), in the matter of the protest 49779-B/1321 of Whitridge, White & Co., against the decision of the collector of customs at Baltimore, Md., as to the amount of duties chargeable on certain merchandise invoiced in rupees, imported per "Barrowmore," and entered June 18th, 1900.

And your petitioner assigns the following errors of law made by the Board of United States General Appraisers, viz:

1st. The Board of United States General Appraisers erred in not holding that the reliquidation ordered by the Secretary of the Treasury under date of June 6th, 1901, and made by the collector, in pursuance of such order, on June 12th, 1901, which was within one year from the date of entry, was made in strict conformity with the provisions of the proviso to section 25 of the act of August 28th, 1894. (See sec. 21, act of June 22d, 1874; 18 U. S. Stat., p. 190.)

2nd. The Board of United States General Appraisers erred in not holding that said reliquidation of June 12th, 1901, having been ordered by the Secretary of the Treasury, acting under the authority conferred by the proviso to section 25 of the act of August 28th, 1894, no decision of the collector as to the rate and amount of duties is involved, and therefore this case does not fall within the jurisdiction of the Board of United States General Appraisers. (See sec. 14, act of June 10th, 1890; and in re W. C. Noon Bag. Co., G. A. 4288, Oct. 4th, 1898.)

3rd. The Board of United States General Appraisers erred in holding that the word "value," as used in the proviso to section 25 of the act of August 28th, 1894, should be construed as meaning "the value of the pure metal," just as in the body of said section; and in not holding that the words "value in United States currency," in the above-mentioned proviso, mean the actual commercial or exchange value of the foreign coin at the time of the exportation of the merchandise to the United States.

And in order that the said decision of the Board of United States General Appraisers may be reviewed upon the questions of law involved, your petitioner prays that a copy of the foregoing application and statement may be served upon the said Morris Whitridge and Richard J. White,
3 trading as Whitridge, White & Co., as provided in section 15 of the act entitled "An act to simplify the laws in relation to the collection of the revenue," approved June 10th, 1890.

And as in duty bound, etc.

WM. F. STONE, *Collector.*
W. L. P.

JNO. C. ROSE,
United States Attorney.

MEMORANDUM.—Copies of which said appeal were delivered to the marshal to be served on the defendants or appellees.

Marshal's return.

Served a copy of the within petition on Morris Whitridge and Richard J. White, trading as Whitridge, White & Company, by leaving a copy thereof with each of them, this 5th day of May, 1902.

WILLIAM F. AIREY,
U. S. Marshal.

Order of court on Board of United States General Appraisers.

Filed 8th May, 1902.

In the circuit court of the United States for the district of Maryland.

WILLIAM F. STONE, COLLECTOR OF CUSTOMS for the port of Baltimore, Maryland,
vs.
MORRIS A. WHITRIDGE AND RICHARD J. White, trading as Whitridge, White & Company.

A copy of the petition in the above entitled cause having been duly served on each of the defendants, as appears by the return of the United States marshal, it is thereupon ordered by the court this 8th day of May, nineteen hundred and two, that the Board of United States General Appraisers return to the circuit court of the United States for the district of Maryland the record and evidence taken before them, together with a certified statement of the facts involved, in the matter of the protest
49779–B 1321 of Whitridge, White & Company against the
4 decision of the collector of customs at Baltimore, Maryland, as to the amount of duties chargeable on certain merchandise invoiced as rupees, imported per "Barrowmore," and entered June 18, 1900.

THOS. J. MORRIS, *Judge.*

MEMORANDUM.—A copy of which said order was forwarded to said Board of United States General Appraisers at New York on 13th day of May, 1902, by the clerk of said court.

Appearance for appellees.

Filed 13 May, 1902. MAY 12th, 1902.

Hon. CLERK U. S. CIRCUIT COURT,
Baltimore, Md.

DEAR SIR: I hereby request that you will kindly enter my appearance on the record as attorney for Messrs. Morris Whitridge and Richard J. White, trading as Whitridge, White & Co., appellees in the case of Stone, collector, against them, commenced in your circuit late in April.

Very respectively,

ALBERT COMSTOCK.

5 *Return of Board of U. S. General Appraisers.*

Filed 24 May, 1902.

In the circuit court of the United States for the district of Maryland.

[SEAL.]

J. R. LAKE,
Chief Clerk Board of U. S. General Appraisers.

In the matter of the application of the collector of customs of Baltimore, Md., for the review of a decision of the Board of U. S. General Appraisers as to the amount of duty on certain bagging imported by Whitridge, White & Co., per s/s "Barrowmore," June 18, 1900.

Return of the Board of United States General Appraisers to the order of Hon. Thomas J. Morris, district judge. Dated New York, May 23, 1902.

The Board of United States General Appraisers, sitting at New York, in response to the order of the court in the above matter, make the following return of the record and evidence taken by them in the above matter, and of the facts involved herein, as ascertained by them.

They state that a letter, hereto annexed as Exhibit A, was received from the collector of customs at Baltimore, Md., submitting, under the provisions of section 14 of the act of June 10, 1890, the protest marked Exhibit B, and described as follows:

Colls. No.	Board No.	Protestants.	Vessel.	Date of entry.
1321	49779-B	Whitridge, White & Co.....	Barrowmore	June 18, '00

The copy of the instructions to the Secretary of the Treasury referred to in the collector's letters is annexed as Exhibit C.

A written objection was filed by the counsel for the Government to the admission of certain agreements referred to in the opinion. The same is annexed as Exhibit D.

On March 25th, 1902, a witness appeared in behalf of the importers and was examined before the board. A copy of the testimony is annexed as Exhibit E.

6 On March 29th, 1902, the board rendered its decision upon said protest. A copy of the opinion, known as G. A. 5110, is annexed as Exhibit F.

EXHIBIT A.

G. McC. R.
C. S. B.

OFFICE OF THE COLLECTOR OF CUSTOMS,
Port of Baltimore, Md., July 27th, 1901.

The President of the General Board of United States General Appraisers, New York, N. Y. 49779-B

SIR: I submit herewith the protests of Messrs. Whitridge, White & Co. (No. 1321, "Barrowmore," June 18, 1900), against the reliquidation, directed by the Secretary of the Treasury, of an entry covering certain gunnies invoiced in rupees, at a different rate than that proclaimed by him for the quarter during which the invoice was consulated.

The gunnies above mentioned were imported into this port per "Barrowmore," which arrived here from Liverpool, England, on June 18, 1900, and they were entered for consumption on the same day (E. No.

3728). The liquidation of May 29, 1901, was made in pursuance of instructions contained in Department Circular No. 61 (T. D. 23059, May 18, 1901). On June 6th, 1901, the Secretary of the Treasury ordered the reliquidation of the entry at the value of 32 cents per rupee under the provisions of sec. 25 of the act of August 28, 1894. (See copy of the Secretary's instruction attached to the papers.) Against this reliquidation the importers have filed the protest which is herewith submitted for your action.

The requirements of sec. 14, act of June 10, 1890, have been complied with by the protesters.

Respectfully, yours,

WM. F. STONE, *Collector.*
W. L. P.

I hereby concur in the above.

JOHN W. CABLE, *N. O.*

Enclosure—One (1) set.

7 (Endorsed:) Received by Board of U. S. General Appraisers Jul. 30, 1901.

EXHIBIT B.

BALTIMORE, *June 18, 1901.*

HON. COLLECTOR OF CUSTOMS, *Port of Baltimore.*

SIR: Notice of dissatisfaction is hereby given with, and protest is hereby made against, your ascertainment, and liquidation of dut'es, and your decision assessing duty, on the entries below named. The reasons for objection are as follows:

You have, by liquidation or reliquidation, assessed duty on the basis in United States money of an assumed value of the invoice coin or currency greater than its actual value or proclaimed value and greater than that permitted or authorized by law. Duty should be assessed on the basis of the value of said coin or currency estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury on the first day of the quarter year during which the goods were exported to the United States. The Secretary of the Treasury has not ordered the liquidation or reliquidation of said entries at a different value from that which is herein claimed, or, if so, such order is illegal, void, and of no effect. No evidence, or no satisfactory evidence, was produced to said secretary to bring these cases within the proviso of sec. 25, tariff act of August 27, 1894, and they are not within it. The body of said section should govern your action in this matter.

The offer is hereby made to furnish evidence to the Board of United States General Appraisers, on reasonable notice from them, of the facts involved, and in support of the contentions herein.

The excess is paid under compulsion, to obtain and retain possession of the merchandise or articles, and you and the Government are held liable for the same, and a demand for the repayment thereof and a readjustment or liquidation of the entries in accordance with the above claims is hereby made. The marks and numbers below given are given under duress and without prejudice.

8

Entry No.	Vessel.	Entered.	Bond No.	Reliquidated.	Marks and Nos.	
3728.	Barrowmore.	June 18, 1900.	C.	June 12, '01.	W. W. H. 251-75	and various as per entries and invoices.

Respectfully, *49779-B.*

WHITRIDGE, WHITE & CO.,
By COMSTOCK & BROWN, *Attorneys,*
Attorneys and Counsellors at Law,
56 Pine street, New York City.

No. 1321.

CUSTOM-HOUSE, BALTIMORE, MD.,
Collector's Office, Liquidating Dept.

Received June 18, 1901.

W. L. P., *For Collector.*

No. 1321.

(Endorsed:) Custom-house, Baltimore, Md. Collector's office, li uidating dept. Received June 18, 1901. W. L. P., for collector.

Protest:
Whitridge, White & Co.
Value of rupee.
Reliquidation directed by Secretary of the Treasury.
Entry No. 3728.
"Barrowmore."
Passed June 18, 1900.
Reliquidated June 12, 1901.
Paid July 27th, 1901.
Protested June 18, 1901.

9 EXHIBIT C.

J.

Division of Customs.
2264-H.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, June 6, 1901.

(Copy.)

G. M. C. R./S. C.

The COLLECTOR OF CUSTOMS,
Baltimore, Md.

SIR: The Department is in receipt of your letter of the 29th ultimo, submitting the following described entries, covering merchandise imported from India and invoiced in rupees, liquidated on the basis of the value of the rupee as estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury for the respective quarters during which the invoices were consulated, pursuant to the instructions contained in Department's Circular No. 61 of May 18, 1901 (T. D. 23059), viz:

Entry.	Importer.
3087	Frank H. Shallus.
3728	Whitridge, White & Co.
4022	William H. Masson.
4902	"
5148	Whitridge, White & Co.
5469	"
5524	William H. Masson.
5568	"
5828	Whitridge, White & Co.
6051	William H. Masson.

In this regard I have to inform you that satisfactory evidence has been produced to the Secretary of the Treasury showing that the value in United States currency of the foreign money of the invoices, namely, the rupee of India, was $.32 at the date of certification, which is ten per centum more than the value proclaimed during the quarter in which the consular certification occurred.

In view of the fact stated, you are hereby directed to reliquidate the entries hereinbefore mentioned on the basis of this latter value, under the authority conferred upon the Secretary of the Treasury by the proviso to section 25 of the act of August 28, 1894.

The entries and other papers submitted are herewith returned.

Respectfully,

(S'g'd.) O. L. SPAULDING,
Assistant Secretary.

22 enclosures. AJ. 49779-B.

EXHIBIT D.

Before the Board of Classification of U. S. General Appraisers.

No. 49779-B.

In the matter of the protest of Whitridge, White & Company, on 25 bales of burlaps.

Counsel for the Government objects to the agreement in protest 49782-B., of Lucius Beebe & Sons, being made a part of the record in the case, on the ground that the same is incompetent, immaterial, and irrelevant, and on the ground that the admission of the said agreement calls for the conclusion, which is not supported by any satisfactory evidence; that the evidence produced to the Secretary of the Treasury in the Beebe case governed his action in ordering the reliquidation of the entry in this case.

ALBERT H. WASHBURN,
Counsel for Treasury Department.

NEW YORK, *March 5, 1902.*

11 EXHIBIT E.

Before the Board of U. S. General Appraisers.

In the matter of the protest of Whitridge, White & Co., 49779–B.

NEW YORK, *March 25th, 1902.*

Before General Appraiser Somerville.

Appearances: Albert H. Washburn, esq., counsel for the Treasury Department; John F. Strauss (of Comstock & Brown), counsel for the importers; Chas. F. Kurz, stenographer.

MORTIMER CLARENCE MACK, called as a witness on behalf of the importers, having been duly sworn, testified as follows:

By Mr. STRAUSS:

Q. What is your business?

A. I am with the American Smelting & Refining Company, silver refiners.

Q. For how long have you been engaged in that business?

A. Seven years July 1, 1902.

Q. Continuously with the American Smelting & Refining Company?

A. Practically. The firm is a consolidation of the old firm of M. Guggenheim & Sons with other smelters. The consolidation took effect here last April.

Q. What has been the nature of your employment with that company?

In the financial department of the business.

Q. What is the business of that company?

A. The business of the company is the smelting and refining of ores.

Q. Does that include silver ores?

A. Silver and lead ores principally, and also copper ores.

Q. Is the business of that corporation a large one?

A. Practically a monopoly of the entire business of this country. There are two or three small independent concerns in this country.

Q. In the course of your connection with that company has it become part of your duty to acquaint yourself with the metal price both here, in New York and in London of bar silver?

A. It certainly has. I have made that quite a study since I have been with the company.

Q. Have you kept a record of the daily quotations of those prices in those markets in the past few years?

A. Well, for the last three years anyway.

12 Q. Can you, by reference to those records, state to the board what was the market price of silver on the 19th of April, 1900?

A.

(Counsel for the Government objects to such evidence on the ground that the same is incompetent, immaterial and irrelevant; on the ground that the order of the Secretary of the Treasury for the reliquidation of said entry at the value of the rupee therein stated is final, and is not subject to review by the Board of General Appraisers, or by any tribunal in these proceedings; on the ground that the said order is conclusive evidence that satisfactory evidence had been produced to the Secretary of the Treasury showing him that the value in United States currency of

the rupee specified in the invoice in question was, at the date of its certification, at least ten per centum more than the value proclaimed by said Secretary of the Treasury during the quarter in which said consular certification occurred; and on the ground that said order is conclusive evidence of the value of said rupee for the purpose of said reliquidation.

The objection is overruled and the testimony is admitted, but not for the purpose of contradicting the finding of the Director of the Mint as to the metal value of the rupee, as proclaimed by the Secretary of the Treasury. Exception.

And to each and every following question and answer counsel for the Government duly objected and excepted on the grounds stated above.)

A. Fifty-nine and one-half cents per ounce in New York.

Q. That is fine silver?

A. Yes, sir.

Q. Mr. Mack, I hand you a book called "Monetary Systems of the World. A Study of Present Currency Systems and Statistical Information Relative to the Volume of the World's Money, with Abstracts of Various Plans Proposed for the Solution of the Currency Problem in the United States," revised edition, by Maurice L. Muhleman, deputy assistant treasurer United States, New York, and published in 1897—and ask you whether you know that book as an authority in the financial market of this city?

A. Yes, sir; I do.

Q. Is it so recognized generally?

A. Any of Mr. Muhleman's works are recognized, because he got up all the statistical information for the Government for some time, especially on silver currency.

Q. You know who Mr. Muhleman was?

A. I know who he was, yes.

13 Q. Do you personally know him to have been the assistant U. S. treasurer at New York?

A. Yes, sir; I do.

Q. Now, turning to page 10 of that book, I call your attention to the statement headed "Table of the World's Money Units," and ask you to state what you find therein as to the weight and fineness of the rupee of India?

A. The weight of the rupee is 11.664 grammes.

Q. And what fineness of silver?

A. .916⅔.

Q. Will you please look at the note at the head of the table and state what Mr. Muhleman states in reference to the weight of grammes as expressed in grains?

A. The gramme is equal to 15.432 grains.

(Counsel for the importers offers in evidence the book and especially page 10, just referred to. Admitted and marked "Exhibit A, 49779-B, March 25, 1902.")

Q. Have you made a calculation based upon the weight of silver and its fineness as contained in that table and upon the weight of the gramme as expressed in grains as given in that table, and the value as based upon the value of pure silver in the markets of this country on April 19, 1900, as previously testified about?

A. I have the calculation right here.

Q. Will you state what value you found in reference to the pure silver contained in the rupee on that date expressed in U. S. currency?

A. .2045015 cents.

Mr. WASHBURN. For the reasons stated in my objections to the admission of this testimony, I decline to cross-examine the witness.

Mr. STRAUSS. I desire to offer in evidence a Government publication issued by the Bureau of Statistics, U. S. Treasury Department, entitled "Statistical Abstract of the United States for the year 1900," and especially page 45 thereof, as corroborative of the testimony of this witness, and call the attention of the board to the table headed "Annual Price of Silver in London per ounce, and Commercial Ratio of Silver to Gold, 1833 to 1900," and to the subdivision under "1900," showing the lowest and highest quotations of silver during that year, and the average quotation, expressed in pence, as corroborating the testimony of the witness and conducive to showing that the value as finally taken for the rupee upon the last reliquidation of this entry was at such a figure that it could not have been based upon the metal value.

14 Counsel for the Government objects to the admission of the book on the grounds already stated.

Objection overruled; exception.

The book is marked in evidence "Exhibit B, 49779-B, March 25, 1902."

Counsel for the importers refers the board to Treasury Decisions 21685, 22511, 18110, 18327, 23059, and to G. A. 5033.

EXHIBIT F.

(23632-G. A. 5110.)

Value of Indian rupee—Reliquidation under proviso to section 25, Act of 1894.

Value of foreign coins: In reducing foreign standard coins to United States currency for the assessment of duties, the basis in all cases is the pure metal value of such coins, and not their exchange value. Newhall's case (91 Fed. Rep., 525), Beebe's case (103 Fed. Rep., 785, and 106 Fed. Rep., 75; 45 C. C. A., 230); In re Beebe (G. A. 5033) followed.

Order of the Secretary of the Treasury: This rule is binding upon all parties; and where the Secretary of the Treasury, under the proviso to section 25, tariff act of 1894, assumes to order the reliquidation of an entry upon the basis of the exchange value of the Indian rupee, instead of its metal value, the action of the collector in obedience to such order is reviewable by the Board of Classification and the courts, being based on an erroneous view of the law.—In re Beebe (G. A. 5033) followed.

Evidence: The evidence in this case, coupled with the declared practice of the Treasury Department, held sufficient to show that the order of the Secretary proceeded upon an erroneous construction of the law, in that it took the true value of the rupee to be its exchange value, and not its pure metal value.

Before the U. S General Appraisers at New York, March 29, 1902.

In the matter of the protest, 49779b-1321, of Whitridge, White & Co., against the decision of the collector of customs at Baltimore, Md., as to the rate and amount of duties chargeable on certain merchandise, imported per "Barrowmore," and entered June 18, 1900.

Opinion by SOMERVILLE, General Appraiser.

This protest covers an importation of gunny bagging, and the only question involving is the correctness of the action of the collector in reducing to United States currency the value of the Indian rupee, which is the currency in which the invoice is made out. The following facts (numbered from 1 to 15, inclusive) have been agreed upon by the counsel for the importers and the counsel for the Government, and we find them to be true.

1. That the importation consisted of 25 bales of gunny bagging, shipped to Baltimore, Md., from Calcutta, India.

That said merchandise was included in an invoice dated April 19, 1900, bearing consular number 1861, and showing a total value for said 25 bales of gunny bagging, together with certain nondutiable charges, of rupees 4556-14-3.

3. That said goods were entered in the port of Baltimore, for consumption, on the 18th day of June, 1900, by Whitridge, White & Co.

4. That after deducting from the invoice value the sum of rupees 157-6-9 for nondutiable charges and adding to this remainder, "to make market value," the sum of rupees 213-0-6, the entry is made out as follows: Rupees 4612-8-0.

5. That the invoice bears the following certificate of R. F. Patterson, consul-general of the United States at Calcutta, India, dated the 19th day of April, 1900:

I further certify that the exchange value of the rupee, in which currency the annexed invoice of merchandise is made out, is at this date 32 cents, estimated in United States gold dollars.

6. That the Secretary of the Treasury issued a circular (T. D. 22120), the material parts of which are as follows:

Value of foreign coins.

(Circular No. 39.)

TREASURY DEPARTMENT, BUREAU OF THE MINT,
Washington, D. C., April 1, 1900.

SIR: In pursuance of the provision of section 25 of the act of August 28, 1894, I present in the following table an estimate of the values of the standard coins of the nations of the world:

(Appended hereto is the following footnote:)

"The coins of silver-standard countries are valued by their pure silver contents, at the average market price of silver for the three months preceding the date of this circular."

16 *Value of foreign coins.*

Country.	Standard.	Monetary unit.	Value in terms of U. S. gold dollar.	Coins.
* *	* *	* *	* *	* *
India.....	Silver.....	Rupee.....	$0.207	Gold: mohur ($7.105). Silver: rupee and divisions.

(Appended to the estimate is the following footnote:)

"Value of the rupee to be determined by consular certificate."

Respectfully,

GEO. E. ROBERTS,
Director of the Mint.

Hon. L. J. GAGE,
Secretary of the Treasury.

TREASURY DEPARTMENT, *April 1, 1900.*

The foregoing estimate by the Director of the Mint of the values of foreign coins I hereby proclaim to be the values of such coins, in terms of the money of account of the United States, to be followed in estimating the value of all foreign merchandise exported to the United States on or after April 1, 1900, expressed in any of such metallic currencies.

L. J. GAGE,
Secretary of the Treasury.

7. That on July 11, 1900, the collector at the port of Baltimore liquidated the duty on said goods by converting into United States gold dollars the rupees of said invoice at the rate of 32 cents for each rupee.

8. That protest, in writing, was duly lodged on July 16, 1900, with the collector of customs at Baltimore.

9. That on May 29, 1901, the collector at the port of Baltimore, acting under instructions from the Acting Secretary of the Treasury, as promulgated in Treasury decision 23059, reliquidated the duty
17 on said goods by converting into United States gold dollars the rupees of said invoice at the rate of 20.7 cents for each rupee.

10. That the said rate of 20.7 cents for each rupee was based upon the metal value of the rupee as proclaimed by the Secretary of the Treasury for the quarter beginning April 1, 1900 (T. D. 22120).

11. That thereafter the collector at the port of Baltimore transmitted to the Secretary of the Treasury, in accordance with the instructions contained in Treasury decision 23059, the said entry and invoice.

12. That under date of June 6, 1901, the Treasury Department returned the said papers to the collector at Baltimore, with a letter, the material parts of which are as follows:

In this regard, I have to inform you that satisfactory evidence has been produced to the Secretary of the Treasury showing that the value in United States currency of the foreign money of the invoices—namely, the rupee of India—was 32 cents at the date of certification, which is 10 per cent more than the value proclaimed during the quarter in which the consular certification occurred.

In view of the facts stated, you are hereby directed to reliquidate the entries hereinbefore mentioned on the basis of this latter value under the

authority conferred upon the Secretary of the Treasury by the proviso to section 25 of the act of August 28, 1894.

The entries and other papers submitted are herewith returned.

Respectfully,

O. L. SPAULDING,
Assistant Secretary.

13. That on June 12, 1901, the collector at the port of Baltimore, in accordance with the instruction of the Assistant Secretary of the Treasury, as formulated in the aforesaid letter of June 6, 1901, reliquidated the duty on said goods by converting into United States gold dollars the rupees of said invoice at the rate of 32 cents for each rupee.

14. That against the reliquidation of June 12, 1901, the importers seasonably filed a protest in writing with the collector at the port of Baltimore, which protest is the basis of this proceeding.

15. That the goods imported in this case are dutiable at five-eight's of a cent a pound upon the weight as taken in the reliquidation of
18 June 12, 1901, and in addition thereto at the rate of 15 per cent of their dutiable value, but no question is raised, but that the entry sets forth correctly in rupees the dutiable value of said goods.

In addition to the above, we further find from the record and from the testimony introduced at the hearing, that the following facts are true:

16. The rate of 32 cents for each rupee, which the collector adopted as his basis of action in the reliquidation of June 12, 1901 (against which reliquidation the present protest was lodged), was the exchange value of the rupee at the date of the certification of the invoice, as shown and attested by the certificate of the United States consul-general at Calcutta.

17. That the metal value of the rupee on April 19, 1900 (the date of certification), was substantially 20.7 cents, and at no time between the 1st of April, 1900, and the 19th of April, 1900, did the metal value of the rupee even approximate to 32 cents.

18. That the rupee referred to herein and in the invoice, being also the rupee named in the quarterly Treasury proclamation of value, is a silver coin and in current in India as such.

19. That the rupee of India contains 11.664 grams of silver .916⅔ fine.

20. That the gram is equal to 15.432 grains.

21. That on April 19, 1900, the market value of bar silver was 59.5 cents per ounce of 480 grains.

22. That the metal value of the rupee on April 19, 1900, was not at least 10 per cent more or less than the value proclaimed during the quarter in which the consular certification occurred.

From the above findings of fact, it is evident that in the order of the Secretary of the Treasury referred to in our twelfth finding, directing the collector at Baltimore to reliquidate the entry on the basis of 32 cents for each rupee, the exchange value of the rupee was adopted as the true value, and not "the value of the pure metal of such coin," as required by section 25 of the tariff act of August 28, 1894, from the proviso to which the Secretary derives his power to order the reliquidation that was made. But the word "value" as used in that proviso has been construed

to mean "the value of the pure metal," just as in the body of the section. (United States v. Newhall & Co., 91 Fed. Rep., 525, decided by Judge Colt, January 7, 1899, affirming an unreported decision of this board; United States v. Bebee, 106 Fed. Rep., 75, 45 C. C. A., 230, affirming United States v. Beebe, 103 Fed. Rep., 785, and In re Beebe, G. A. 4498; see also In re Beebe, G. A. 5033.)

19 Not only does this conclusion necessarily follow from a careful examination of the record and evidence in the case, but it is manifest from various publications of the Treasury Department that for some time past it has been their practice to require collectors to reduce the Indian rupee to United States currency upon the basis of the exchange, rather than the pure metal value of that coin. In Treasury decision 18110, bearing date June 16, 1897, the Assistant Secretary of the Treasury wrote to the collector at Boston as follows:

"As the actual value of the rupee is shown to have been, at the time of shipment, greater by more than 10 per cent than the proclaimed value, and as the evidence of such actual value contained in the certification of the United States consular officer on the invoice submitted with the protests is satisfactory to the Department, your action in liquidating said entries at the value stated by that officer is hereby approved under the authority of section 25 of the act of August 28, 1894."

On September 4, 1897, in Treasury decision 18327, the Assistant Secretary issued the following statement:

"So long as the actual exchange value of the rupee of India exceeds by more than 10 per cent the value proclaimed according to the quarterly estimates of the Director of the Mint, such actual value (and not the proclaimed value) will be taken in accordance with the provisions of section 25 of the act of August 28, 1894, as a basis for the computation of duties on merchandise invoiced as rupees."

In Treasury decision 21685, dated October 20, 1899, Assistant Secretary Spaulding, speaking of the rupee of Zanzibar, says:

"It is accepted generally, and follows in the rate of exchange the rupee of Bombay. * * * You are therefore authorized to estimate the value of the rupee of Zanzibar on the basis of the value shown by the consular certificates attached to the invoice covering contemporaneous shipments from India."

In Treasury decision 22511, under date of September 26, 1900, Assistant Secretary Spaulding instructed collectors in regard to the Indian rupee as follows:

"If such proclaimed value is less than that shown by the con-
20 sular certificates accompanying invoices, you will report the fact immediately to this Department, so that are liquidation, should one be deemed necessary, may be ordered, and the collection of the increased duties chargeable on such importations secured."

Note, also, Treasury decision 23059.

This series of letters and circulars is important as showing the practice of the Treasury Department in this matter of the value of the Indian rupee, and is corroborative of what has been said above. We are entirely satisfied, therefore, that the order of the Secretary of the Treasury was based on an erroneous construction of the law, in that he assumed that the proviso to said section 25 of the act of August 28, 1894, authorized him to adopt the exchange value of the rupee, rather than its pure metal

value, whenever there was a difference between the two of at least 10 per cent. For the reasons fully discussed by us in our decision, In re Beebe (G. A. 5033, of November 26, 1901, now on appeal before the circuit court at Boston), we are clearly of the opinion that the reliquidation of the entry in this case, made pursuant to the Secretary's order, was illega and unauthorized, and that the jurisdiction of this Board extends to correct it, and to order a reliquidation upon the value of the rupee as estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury.

It is not improper to add that, since the issuance of our decision In re Beebe (G. A. 5033), in which we referred to the case of In re Downs (G. A. 4912) as bearing on the question of the jurisdiction of this Board to determine whether the Secretary of the Treasury had adopted a true construction of the law, our decision in the Downs case has been affirmed by the circuit court of appeals for the fourth circuit in Downs v. United States (113 Fed. Rep., 144), the court holding that the Secretary's decision in a case of such a character is reviewable by the Board of Classification and the Federal courts.

The protest is sustained and the decision of the collector reversed, with instruction to reliquidate the entry accordingly.

(Sd.) H. M. SOMERVILLE,
I. F. FISCHER,
W. B. HOWELL,
Board of Classification of U. S. Gen. Appraisers.

And for a certified statement of the facts involved in said matter,
21 as ascertained by them, the said Board states that said facts are fully set forth in the decision aforementioned, and that no other facts were ascertained by said Board than such as are shown by said decision and other exhibits hereto attached.

H. M. SOMERVILLE,
I. F. FISCHER,
W. B. HOWELL,
Board of U. S. General Appraisers.

Order of reference.

Filed 2nd June, 1902.

At a stated term of the circuit court of the United States in and for the district of Maryland, held in the United States court-house, in the city of Baltimore, on the 2nd day of June, 1902.

Present: Hon. Thomas J. Morris, U. S. Judge.

WILLIAM F. STONE, COLLECTOR OF CUSTOMS, district of Baltimore, Md., appellant,
vs.
MORRIS WHITRIDGE & RICHARD J. WHITE, trading as Whitridge, White & Co., appellees.
} Suit No. 1528.

Upon the application of the above-mentioned importers, by their attorney, Albert Comstock, esq., it is ordered, that this action be referred

to Marion De Vries, esq., one of the general appraisers as an officer of the court, to take and return to the court such further evidence herein as may be offered by any of the persons or parties in interest within sixty days after the date of the order.

THOS. J. MORRIS,
U. S. Judge.

JUNE 2ND, 1902.

22 *Decree.*

Filed 26th September, 1903.

At a stated term of the circuit court of the United States, in and for the district of Maryland, held in the United States court-house, in the city of Baltimore, on the 26th day of September, 1903.

Present: Hon. Thomas J. Morris, U. S. Judge.

WILLIAM F. STONE, COLLECTOR OF CUSTOMS, district of Baltimore, Maryland, appellant,
vs.
MORRIS WHITRIDGE AND RICHARD J. WHITE, trading as Whitridge, White & Co., appellees.
} Suit No. 1528.

The above cause coming on for hearing and determination before this court, on the application of the above-named appellant for a review of the questions of law and fact involved in the decision of the Board of United States General Appraisers herein, on the return of the said Board of the record and evidence taken by them, with their certified statement of the facts involved therein, together with their decision thereon.

Now, after hearing John C. Rose, esq., United States attorney, on behalf of the appellant, and Albert Comstock, esq., of counsel for the appellees, it is ordered, adjudged, and decreed that there was no error in the proceedings before the Board of General Appraisers, and that their decision herein be, and the same is hereby, affirmed.

THOS. J. MORRIS,
U. S. Judge.

23 *Petition of William F. Stone, collector, for an appeal, assignment of errors, and order of court allowing an appeal.*

Filed 13 October, 1903.

In the circuit court of the United States for the district of Maryland.

WILLIAM F. STONE, COLLECTOR OF CUSTOMS, district of Baltimore, Maryland,
vs.
MORRIS WHITRIDGE AND RICHARD J. WHITE, trading as Whitridge, White & Company.

To the honorable the judges of said court:

The petition of William F. Stone, collector of customs of the port of Baltimore, prays that the petitioner may be allowed to appeal to the

United States circuit court of appeals for the fourth circuit from the decree passed, and the judgment entered in pursuance thereof, in this case on the twenty-sixth day of September, 1903, that a proper citation may be issued and served upon the said Morris Whitridge and Richard J. White, copartners, trading as Whitridge, White and Company, of Baltimore, or their attorney, and that the record of said decree and judgment, and all papers relating thereto shall be transmitted to the said United States circuit court of appeals for the fourth circuit, in order that said decree may be reviewed and revised by the said United States circuit court of appeals.

And the petitioner files herewith the following:

ASSIGNMENT OF ERRORS.

Which he asserts exist in said decree and judgment, and which are intended to be urged in said United States circuit court of appeals.

The appellant will contend that the court below erred as follows:

1. In affirming the decision of the Board of General Appraisers.

2. In not decreeing that the reliquidation ordered by the Secretary of the Treasury under date of June 6th, 1901, and made by the collector, in pursuance of such order, on June 12th, 1901, which was within
24 one year from the date of the entry, was made in strict conformity with the provisions of the proviso to section 25 of the act of August 28th, 1894.

3. In not decreeing that said reliquidation of June 12th, 1901, having been ordered by the Secretary of the Treasury, acting under the authority conferred by the proviso to section 25 of the act of August 28th, 1894, no decision of the collector as to the rate and amount of duties is involved, and, therefore, that this case does not fall within the jurisdiction of the Board of United States General Appraisers.

4. In decreeing that the word "value" as used in the proviso to section 25 of the act of August 28th, 1894, should be construed as meaning "the value of the pure metal" just as in the body of said section, and is not decreeing that the words "value in United States currency," in the above mentioned proviso, mean the actual commercial or exchange value of the foreign coin at the time of the exportation of the merchandise to the United States.

P. C. KNOX,
Attorney-General of the United States.
By JOHN C. ROSE,
United States Attorney for the District of Maryland.

Let the appeal be allowed as prayed and citation issue.

THOS. J. MORRIS, *Judge.*

Citation.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to Morris Whitridge and Richard J. White, trading as Whitridge, White & Co., greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals for the fourth circuit, to be holden at Richmond on the 10th day of November next, pursuant to an appeal

from a decree of the circuit court of the United States for the district of Maryland, in your favor passed in a cause in said court wherein William F. Stone, collector of customs for the district and port of Baltimore, Maryland, is appellant and plaintiff, and you are appellees and defendants, to show cause, if any there be, why the decree rendered against the said appellant and plaintiff in said cause mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

25 Witness, the Honorable Thomas J. Morris, judge of the said circuit court of the United States, this thirteenth day of October, in the year of our Lord one thousand nine hundred and three.

THOS. J. MORRIS, *Judge.*

Service of the within citation acknowledged this 14th day of October, 1903.

ALBERT COMSTOCK,
Attorney for Whitridge, White & Co.

Order to transmit record.

And thereupon it is ordered by the court here that a transcript of the record and proceedings of the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States circuit court of appeals for the fourth circuit, and the same is transmitted accordingly.

Test:

JAS. W. CHEW, *Clerk.*

Clerk's certificate.

UNITED STATES OF AMERICA,
District of Maryland, to wit:

I, James W. Chew, clerk of the circuit court of the United States for the district of Maryland, do hereby certify that the foregoing is true transcript of the record and proceedings of the said circuit court, together with all things thereunto relating, in the therein entitled cause.

In testimony whereof I hereunto set my hand and affix the seal of said circuit court this 16th day of October, 1903.

[SEAL.] JAS. W. CHEW, *Clerk.*

26

27 *Proceedings in the United States circuit court of appeals for the fourth circuit.*

WILLIAM F. STONE, COLLECTOR OF CUSTOMS, Baltimore, appellant,
versus
WHITRIDGE, WHITE AND COMPANY, APPELLEE. } No. 518.

Appeal from the circuit court of the United States for the district of Maryland, at Baltimore.

Octo. 27, 1903, transcript of the record is filed and the cause is docketed.

Same day, appearance of John C. Rose, United attorney for the appellant; order filed.

Same day, appearance of Albert Comstock and William R. Sears for the appellee; order filed.

Nov. 21, 1903, the cause is continued.

Feb. 5, 1904 (February term, 1904), cause came on to be heard and is argued by counsel before Judges Simonton, Boyd, and Keller and submitted.

March 14, 1904 (same term), the court announced and *and* filed its opinion, which is as follows, to wit:

28

29 *Opinion.*

Filed March 14, 1904.

United States circuit court of appeals, fourth circuit. February term, 1904.

WILLIAM F. STONE, COLLECTOR, APPELLANT,
vs.
WHITRIDGE, WHITE & CO., APPELLEES. } No. 518.

Appeal from the circuit court of the United States for the district of Maryland.

Argued Feb. 5, 1904. Decided March 14, 1904.

Before Simonton, circuit judge, and Boyd and Keller, district judges.

John C. Rose, U. S. attorney (Morris A. Sofer, assistant U. S. attorney, on briefs), for appellant, and Albert Comstock and William R. Sears for appellees.

BOYD, district judge:

The facts in this case are substantially as follows: Stone, the appellant, is collector of customs for the district and port of Baltimore, Md. In June, 1900, Whitridge, White & Co., the appellees, imported from India into the port of Baltimore a cargo of gunny bagging. The gunnies were purchased by the importers at Calcutta, and were invoiced in rupees, which is a silver coin of India. The "Barrowmore," in which the gunnies were brought into this country, arrived in Baltimore on the 18th of June, 1900, and the goods were entered for consumption on that day. On the 11th of July, 1900, the collector at Baltimore liqui-
30 dated the duty on the said goods, by converting into United States gold dollars the rupees of the invoices at the rate of 32 cents for each rupee. To this liquidation the importers entered a protest, in writing, on the 16th day of July, 1900, and on the 29th of May, 1901, the collector, acting under instructions from the Secretary of the Treasury, reliquidated the duty on said goods by converting into United States gold dollars the rupees of the invoices at the rate of 20.7 cents for each rupee. That thereafter, on the 12th day of June, 1901, the collector again reliquidated the invoices, and placed the value of the rupee at 32 cents. This last action of the collector was in response to instructions from the Secretary of the Treasury, relative to these invoices, as follows:

"In this regard I have to inform you that satisfactory evidence has been produced to the Secretary of the Treasury showing that the value in

United States currency of the foreign money of the invoices, namely, the rupee of India, was 32 cents at the date of certification, which is ten per cent more than the value proclaimed during the quarter in which the consular certification occurred. In view of the fact stated, you are hereby directed to reliquidate the entries hereinbefore mentioned, on the basis of this latter value, under the authority conferred upon the Secretary of the Treasury by the proviso to section 25 of the act of August 28th, 1894."

To this reliquidation the appellees duly filed a protest, in writing, with the collector at Baltimore. The goods imported are dutiable at five-eighths of a cent a pound upon the weight as taken in the reliquidation of June 12, 1901, and in addition thereto at the rate of 15 per cent of their dutiable value. It is admitted that the metallic value of the rupee on April 19, 1900, the date on which the invoices in this case were certified, was substantially 20.7 cents, and at no time between the 1st of April, 1900, and the 1st of July, 1900, did the metallic value of the rupee even approximate 32 cents. It is further admitted that the reliquidation made by the collector on the 12th of June, 1901, to which the importers objected, and which is the basis of this proceeding, in which the Indian rupee was valued at 32 cents, was the exchange value of the rupee at the date of the certification of the invoices, as shown and attested by the certificate of the United States consul-general at Calcutta.

On the first of April, 1900, acting under the authority of law,
31 the Director of the Mint had estimated the metallic value of an Indian rupee to be 20.7 cents, and this valuation was duly proclaimed by the Secretary of the Treasury. The action of the Secretary of the Treasury, in directing a reliquidation of the invoices upon which the present controversy arises, was based upon an opinion of the Secretary that, after the estimate of the Director of the Mint, and the proclamation thereon, the value of the Indian rupee during the quarter had varied as much as 10 per cent; that its value had appreciated this much, or more, and that the invoices of the gunnies, imported by the appellees, should be reliquidated for duty at the exchange, or commercial value of the Indian rupee, which was certified by the consul, and not at the metallic value, which had been estimated by the Director of the Mint. As before stated, against the reliquidation of June 12, 1901, made by the collector of Baltimore, under the instructions of the Treasury Department, the appellees protested, and this protest, with the facts in the case, was submitted by the collector to the Board of General Appraisers at New York. This board rendered a decision adverse to the collector, declaring, in effect, that the metallic, and not the commercial, value of the Indian rupee, at the time of the invoices, was the true basis of liquidation. From this decision the case was brought, by petition on behalf of the collector, to the circuit court for the district of Maryland; the circuit court affirmed the decision of the Board of General Appraisers, and the collector appealed to this court.

The appellant lays down two propositions—namely, that the liquidation of June 12th, 1901, was the decision of the Secretary of the Treasury and was final, and that the Board of General Appraisers had no jurisdiction to review it. The question here is, therefore, can these positions, or either of them, be maintained. We think not. The customs administrative act of June 10, 1890, section 14, plainly provides that,

when the collector of customs has liquidated the invoices for duty, the owner or importer may, after such liquidation, give notice in writing to the collector of his objections thereto, and if the merchandise is entered for consumption shall pay the full amount of the duties and charges ascertained to be due thereon; and upon such notice and payment, the collector shall transmit the invoice, and all the papers and exhibits connected therewith, to the Board of three General Appraisers, which shall be on duty at the port of New York, etc., which board shall exam-
32 ine and decide the case thus submitted, and their decision, or that of a majority of them, shall be final and conclusive upon all persons interested therein. . . . Section 15 of said act provides for an appeal from a decision of the Board of General Appraisers, to the circuit court of the United States, on behalf of either party.

The appellant contends that the action submitted to the Board of General Appraisers was not that of the collector of customs at Baltimore, but was a decision of the Secretary of the Treasury, made in the discharge of the duties imposed upon him by law, and that the Board of General Appraisers has no authority in law to review him. It is insisted, on the part of the appellant, that Congress could not have intended to submit the decision of the Secretary of the Treasuary upon matters in which the statute imposes upon him the responsibility of deciding, to review and possibly reversal, by subordinate divisions of his own department.

We can not agree that, in exercising the powers of review vested in the Board of General Appraisers by law, the board is a subordinate division of the Treasury Department. On the other hand, the members of the Board of General Appraisers are appointed by the President, by and with the advice and consent of the Senate, and, acting within its jurisdiction, the board is an independent tribunal, empowered by law to pass upon certain controversies between the Government and the importer, and in this respect, the board is no more subordinate to the Treasury Department than is any other court.

As bearing upon this view, we may refer to the fact that, by section 15 of the admistrative customs act, it is provided, among other things, that, if the Secretary of the Treasury is dissatisfied with the action of the board, his only relief is by appeal to the circuit court of the United States. It may be well, at this juncture, to give the full text of section 25 of the act of Congress of August 28th, 1894, upon the construction of which the questions involved in this case depend. That section reads as follows:

"That the value of foreign coin, as expressed in the money of account of the United States, shall be that of the pure metal of such coin of standard value, and the values of the standard coins in circulation of the various nations of the world, shall be estimated quarterly by the
33 Director of the Mint, and be proclaimed by the Secretary of the Treasury immediately after the passage of this act, and thereafter quarterly on the first day of January, April, July, and October, in each year, and the values so proclaimed shall be followed in estimating the value of all foreign merchandise exported to the United States during the quarter for which the value is proclaimed, and the date of the consular certification of any invoice shall, for the purposes of this section, be considered the date of exportation: provided, that the Secretary of

the Treasury may order the liquidation of any entry at a different value whenever satisfactory evidence shall be produced to him showing that the value in United States currency of the foreign money specified in the invoice was, at the date of certification, at least ten per centum more or less than the value proclaimed during the quarter in which the consular certification occurred."

In disposing of the questions presented, and especially that in which it is insisted by the appellant that the reliquidation of June 12, 1901, was a decision of the Secretary of the Treasury, and therefore final, without power in the Board of General Appraisers or the courts to review it, it is perhaps as well to consider the reasons which must have led to the enactment of the law which we have just quoted, and by this method we may arrive at the true meaning of the legislation. We find that, for many years, in the administration of our tariff laws, great difficulties had been encountered in so adjusting the value of goods purchased in foreign countries and invoiced in foreign money, as to be altogether fair, in every instance, to the Government and to the importer. Especially was this true of importations of goods which had been purchased in countries where silver coin was the standard money. This condition gave rise to disagreements between the Government and the importers, and often the aid of the courts was invoked to relieve the situation. The Congress, no doubt appreciating existing conditions, undertook to set the matter at rest by the act of March 3rd, 1873, chap. 268, 17 Stat., 602, by which it was enacted "That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value, and the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the Director of the Mint, and be proclaimed on the first day of January by the Secretary of the Treasury."

34 This act was plain, and there could be doubtful construction of its terms. It provided that the metallic value of foreign coin should be estimated annually by the Director of the Mint, and proclaimed on the first day of January by the Secretary of the Treasury. When so estimated and proclaimed the value of foreign coin for the purposes of liquidation of invoices of imported goods was settled, and had the force of a statute, which controlled the action of the collectors and other officers of the customs in determining import duties, and it was in view of this statute that the decisions in Hadden vs. Merritt, 115 U. S., 25, and The United States vs. Klingenberg, 153 U. S. 93, were made, as was also the decision in Cramer vs. Arthur, 102 U. S., 612, that the valuations of foreign standard coins made by the Director of the Mint, and proclaimed by the Secretary of the Treasury, were conclusive and binding, both on collectors of customs and on importers, and that evidence to show that such valuations were inaccurate was not receivable. In the latter case the principle declared in Collector vs. Richards, 23 Wall., 246, was cited and reaffirmed.

These several decisions are upon the ground that the Director of the Mint, in basing his estimate upon the metallic value of foreign coin, had acted within the scope of the authority conferred upon him by the statute, and having so acted his finding of fact became the law as fully as if his estimate had been incorporated in the statute itself.

Section 25 of the act of August 28th, 1894, excepting the proviso, was a substantial re-enactment of the law of 1873, the only change being that the Director of the Mint should make his estimates of the value of foreign coin quarterly, instead of annually, as provided in the previous law. And then comes the proviso: "That the Secretary of the Treasury may order the liquidation of any entry at a different value, whenever satisfactory evidence shall be produced to him, showing that the value in United States currency of the foreign money specified in the invoice was, at the date of the certification, at least ten per centum more or less than the value proclaimed during the quarter in which the consular certification occurred."

That frequent fluctuations in the metallic value of foreign coins led to the act of 1904, would seem to be indisputable. The law as it stood since 1873 empowered the Director of the Mint to make his estimate of the metallic value of foreign coin on the first day of January, in each year, but Congress saw the necessity of having this estimate made quarterly instead of annually, but still adhered to the metallic value as the basis of the estimate. Then where can we find a reason to conclude that it was the intention of Congress to make a departure from the metallic principle which permeated its legislation and confer upon the Secretary of the Treasury an exclusive power to arbitrarily adopt another basis? Is it not more in accord with the language of the statute, the purposes for which it was enacted, the conditions it was intended to meet, and fair construction, to hold that the proviso was inserted in the act simply to authorize the Secretary of the Treasury in case there should be a variation in the metallic value of the foreign coin after the Director of the Mint had made his estimate at the first of the quarter, and before, by the terms of the law, he could make another estimate at the beginning of the next quarter to order liquidations when it was made satisfactorily to appear to him that such variations in the metallic value to the extent of ten percentum had taken place? If such is not the law then, under the proviso to section 25, the Secretary of the Treasury is absolutely unrestrained. He is neither limited by the metallic value nor by the exchange value of the foreign coin, but he may at his option prescribe any value for foreign coin and direct its use by officers of the customs in the invoicing of foreign goods for duty. And following out the contention of the appellant in this case the importer would have no remedy whatever, either through the Board of General Appraisers or the courts. Certainly Congress did not intend to confer such unbridled power upon the head of an Executive Department.

This question is admirably discussed in two very learned opinions recently delivered, the one in the circuit court of the United States for the district of Massachusetts in the case of The U. S. vs. Beebe, 117 Fed. Rep., 670, and the other in the same case in the circuit court of appeals for the first circuit, 122 Fed. Rep., 672. It is not necessary for us to go further than to cite the opinions in these two cases, which we think declare the law as it is and proceed upon a line of reasoning which leads irresistably to the conclusion that when the Secretary of the Treasury undertook to order a reliquidation of the foreign invoices for duty upon a basis other than the metallic value of the foreign coin in which such invoices were certified he went beyond his authority, and his act had no legal effect.

We then come to the consideration of the question as to whether
36 the decision of the Secretary of the Treasury and the subsequent action of the collector of customs thereunder can be reviewed by the Board of General Appraisers and by the courts. We can not put this question more forcibly than by quoting from the comprehensive opinion of Judge Colt in the Beebe case, 117 Fed., the following language:

"Can the Secretary choose any standard of value for the foreign coin he pleases, as, for example, the exchange value, and will such action be final, although it is outside of the authority and jurisdiction conferred upon him by the proviso? Can the Secretary first adopt an illegal standard of value and then make an order or finding based upon such illegal standard which can not be impeached? If the doctrine of conclusiveness goes to this extent, then the importer is no longer governed by the laws which Congress enacts, but by the Secretary's interpretation of them; and the result might be that under the form of reliquidation the pure metal rule of value in the assessment of duties, which has prevailed since the origin of the Government, may to a large extent be nullified."

It is conceded that if the ascertained metallic value of the silver rupee of India, either that made by the Director of the Mint at the first of the quarter and proclaimed by the Secretary or a metallic value determined by the Secretary under the proviso of section 25, had been adopted by the collector in making the reliquidation of invoices of the appellees' goods on the 12th of June, 1901, under the decisions before cited, such action by the collector would have been conclusive. But the collector did not do this; on the other hand, acting under instructions from the Secretary of the Treasury, he adopted as a basis of liquidation the commercial value of the rupee as certified by the American consul at Calcutta at the date of the invoices. The instruction was the act of the Secretary, but the liquidation ascertaining the dutiable value of the goods and determining the amount of duty to be paid by the importer was the act of the collector.

"The action of a collector in declining to accept the proclaimed value of a foreign standard coin and in adopting another standard, thereby increasing the amount of duty on imported merchandise, does not relate to a disputed appraisement, but to the amount of duties, and under the customs administrative act, June 10, 1890, sections 14–15, is reviewable on the protest of the importer by the Board of General
37 Appraisers and the circuit court." U. S. vs. J. Allston Newhall & Co., 91 Fed. Rep., 525.

In the present case the collector ignored the metallic value of the rupee, 20.7 cents, which had been proclaimed for the quarter in which the importation of the goods was made, and adopted the exchange value of 32 cents, which appeared from the certificate of the consul, and thus increased the amount of duty upon the importation. The principle declared in the Newhall case, which we hold to be the law, applies here, and, in our opinion, the Board of General Appraisers and the circuit court of the United States had jurisdiction.

As bearing upon this point, and in entire accord with the position we take, we quote again from the learned opinion of the circuit court of appeals for the first circuit, in the case of The United States vs. Beebe & Sons, 122 Fed. Rep., 762, in which Judge Putnam, in delivering the opinion of the court, says:

"The United States raises a question of the jurisdiction of the Board of General Appraisers. On that point we need add but very little to what was said in the circuit court. The act of June 10, 1890, chap. 407, 26 Stat., 131, is the law which established this tribunal. The United States rests on the words, 'decision of the collector,' found in section 14, and they claim that in the case at bar the 'decision' was not that of the collector of Boston, but of the Secretary of the Treasury. This is a narrow construction of the expression, because the ultimate tribunal which reliquidated was not the Secretary but the collector; so that, at common law, mandamus would lie only against the latter, and not against the former. This position, moreover, begs the question, because if the action of the Secretary was unlawful, as we hold it was, the collector could rest nothing done by him on that action, and whatever he did was his own."

The judgment of the circuit court is affirmed.

39 Same day, to wit, March 14, 1904, the court made and entered the following decree, to wit:

Decree.

Filed March 14, 1904.

United States circuit court of appeals, fourth circuit.

WILLIAM F. STONE, COLLECTOR OF customs, appellant,
vs.
WHITRIDGE, WHITE & COMPANY, appellees. } No. 518.

Appeal from the circuit court of the United States for the district of Maryland.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Maryland, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed.

March 14, 1904.

CHARLES H. SIMONTON,
Circuit Judge.

41 And on another day, to wit, April 4, 1904, the mandate of this court is issued and transmitted to the said circuit court at Baltimore, Md., in due form.

Clerk's certificate.

UNITED STATES OF AMERICA,
Fourth circuit, ss:

I, Henry T. Meloney, clerk of the United States circuit court of appeals for the fourth circuit, do certify that the foregoing is a true copy

of the entire record and proceedings in the therein-entitled cause, as the same remains upon the records and files of the said circuit court of appeals.

In testimony whereof I hereto set my hand and affix the seal of the said United States circuit court of appeals for the fourth circuit this 30th day of April, A. D. 1904.

[SEAL.]

HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals, Fourth Circuit.

43 United States circuit court of appeals, fourth circuit.

UNITED STATES OF AMERICA:

I, Henry T. Meloney, clerk of the United States circuit court of appeals for the fourth circuit, do make return of the annexed writ of certiorari issued out of the Supreme Court of the United States in the cause therein entitled on the 29th day of November, 1904, by annexing hereto a certified copy of the stipulation of the attorneys of record, that the certified copy of the transcript of the record now on file in the office of the clerk of the Supreme Court of the United States shall constitute the return of the clerk of the circuit court of appeals for the fourth circuit to the writ of certiorari issued herein.

In testimony whereof I hereto set my hand and affix the seal of the said circuit court of appeals, at Richmond, on this seventh day of January, A. D. 1905.

[SEAL.]

HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals, 4th Ct.

44 Supreme Court of the United States, October term, 1904.

THE UNITED STATES, PETITIONER,
v.
WHITRIDGE, WHITE & COMPANY. } No. 413.

Stipulation as to return to writ of certiorari.

It is hereby stipulated by counsel for the parties to the above-entitled cause that the certified copy of the transcript of the record now on file in the office of the clerk of the Supreme Court of the United States shall constitute the return of the clerk of the circuit court of appeals for the fourth circuit to the writ of certiorari issued herein.

November 30, 1904.

H. M. HOYT,
Solicitor-General.
ALBERT COMSTOCK,
Counsel for Respondents.

UNITED STATES OF AMERICA, *ss:*

I, Henry T. Meloney, clerk of the United States circuit court of appeals for the fourth circuit, do certify that the above stipulation of counsel is a true copy of the original filed January 7, 1905, and now remaining among the records and proceedings in the therein entitled cause.

In testimony whereof I hereto set my hand and affix the seal of the said circuit court of appeals at Richmond, on this 7th day of January, A. D. 1905.

[SEAL.]

HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals, 4th Ct.

45 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the fourth circuit, greeting:

Being informed that there is now pending before you a suit in which William F. Stone, collector of customs for the district and port of Baltimore, Maryland, is appellant, and Morris Whitridge and Richard J. White, trading as Whitridge, White and Co., are appellees, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the district of Maryland, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the

46 United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the honorable Melville W. Fuller, Chief Justice of the United States, the 29th day of November, in the year of our Lord one thousand nine hundred and four.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

47 (Indorsed:) File No. 19513. Supreme Court of the United States, No. 413, October term, 1904. The United States, petitioner, vs. Whitridge, White & Co. Writ of certiorari, and return. Filed January 9, 1905.

The execution of the within writ of certiorari appears from the schedules hereto annexed. Henry T. Meloney, clk. U. S. cir. court of appeals, Jan. 7, 1904.

48 In the Supreme Court of the United States, October term, 1904.

THE UNITED STATES, PETITIONER,
vs.
MORRIS WHITRIDGE AND RICHARD J. WHITE, trading as Whitridge, White & Co., respondents. } No. 413.

In the above-entitled cause it is hereby stipulated that the following may be printed and considered as part of the record herein, being evidence formally introduced and admitted of record in this cause at the hearing thereof before the board of general appraisers, also used at the hearing of the cause before the United States court of appeals, fourth circuit, and referred to as Exhibit A, testimony of Mack, C. C. A. record, page 13, to wit:

1. "Table of the World's Money Units," appearing at pages 10 and 11 of the book entitled "Monetary Systems of the World," by Maurice

L. Muhleman, deputy assistant treasurer, United States, New York, and published by The Money Publishing Company, 150 Nassau st., New York, 1897. The said table is as follows:

49 *Table of the world's money units.*

Weights are given in grammes, values in United States coin, fineness in thousandths.
The value of silver coins is based upon the coining value of an ounce of silver in the United States, $1.2929. The gramme is equal to 15.432 grains.

SINGLE-GOLD STANDARD COUNTRIES.

Country.	Unit.	Value.	Weight.	Fineness.	Subsidiary silver coin.			
					Principal coin.	Weight.	Fineness.	Equivalent at coining rate.
Great Britain	Pound	$4.86½	7.988	.916⅔	Shilling	5.655	.925	$0.21.7
Germany	Mark	.23.8	.398	.900	Mark	5.555	.900	.20.8
Sweden, Norway, Denmark	Krone	.26.8	.448	.900	Krone	7.5	.800	.24.9
Austria-Hungary	Krone	.20.3	.33⅞	.900	Krone	5.	.835	.17.4
Roumania	Ley	.19.3	.3226	.900	Ley	5.	.835	.17.4
Turkey*	Piaster	.04.4	.072	.916⅔	5-piasters	6.014	.830	.20.7
Portugal*	Milreis	1.08	1.774	.916⅔	Testoon	2.5	.916⅔	.09.5
Brazil*	Milreis	.54.6	.8965	.917	Milreis	12.75	.917	.48.6
Chile	Peso	.54.9	.365	.916⅔	Peso	20.	.835	.69.4
Canada	Dollar	1.00	No gold coins.		Half-dollar.	11.62	.925	.44.6
Newfoundland	Dollar	1.01.4	1.664	.916⅔	Half-dollar.	11.782	.925	.44.8
Egypt	Pound	4.94.3	8.5	.875	5-piasters	7.	.883⅓	.24.3

* Depreciated paper has forced circulation; gold at a premium.
Australasia, Cape Colony, the British West Indies have the British standard, and in Canada the pound sterling is also a legal tender.

50 SINGLE-SILVER STANDARD COUNTRIES.

Country.	Unit.	Equivalent at coining rate.	Weight.	Fineness.	Subsidiary pieces=to unit.		Gold piece=to unit.		
					Weight.	Fineness.	Weight.	Fineness.	Value.
Russia‡	Rouble	$0.74.8	19.996	.900	17.99	.500	1.29	.900	$0.77.2
Mexico	Peso	1.01.6	27.073	.902.7	27.073	.902.7	1.692	.875	.98.4
Central America	Peso	.93.5	25.	.900	25.	.835	1.613	.900	.96.5
Colombia‡	Peso	.93.5	25.	.900	25.	.835	1.613	.900	.96.5
Bolivia	Boliviano.	.93.5	25.	.900	25.	.900	1.613	.900	.96.5
Peru	Sol	.93.5	25.	.900	25.	.900	1.613	.900	.96.5
Ecuador‡	Sucre	.93.5	25.	.900	25.	.900	1.613	.900	.96.5
India	Rupee	.44.4	11.664	916⅔	11.664	.916⅔	11.664*	.916⅔	.710.9
Japan	Yen	1.00.8	26.956	.900	25.	.800	1.667	.900	.99.7
China	Tael†	1.36.4	36.56	.....	.....	.....	No coins.		
Hongkong and Straits	Dollar	1.00.8	26.956	.900	25.	.800	No coins.		
Cochin China	Piaster	1.01.8	27.215	.900	27.215	.900	No coins.		

* Mohur=to 15 rupees.
† Shanghai tael. The new dollar coinage has not yet been rated.
‡ Depreciated paper has forced circulation; gold at a premium.

Table of the world's money units—Continued.

51 DOUBLE-STANDARD COUNTRIES.

Country.	Unit.	Value.	Gold unit.		Silver unit.		Subsidiary coin.		
			Weight.	Fineness.	Weight.	Fineness.	Weight.	Fineness.	Value.
United States	Dollar	$1.00	1.672	.900	26.729	.900	25.	.900	$0.93.5
Haiti	Gourde	.96.5	1.613	.900	25.	.900	25.	.835	.87.0
Uruguay*	Peso	1.03.4	1.697	.917	25.	.900	25.	.900	.93.5
Argentine Republic*	Peso	.96.5	1.613	.900	25.	.900	25.	.900	.93.5
Venezuela	Bolivar	.19.3	.3226	.900	5.	.900	5.	.835	.17.4
The Latin Union. France	Franc	.19.3	.3226	.900	5.	.900	5.	.835	.17.4
The Latin Union. Belgium	Franc								
The Latin Union. Italy*	Lira								
The Latin Union. Switzerland	Franc								
The Latin Union. Greece*	Drachma								
Spain*	Peseta	.19.3	.3226	.900	5.	.900	5.	.835	.17.4
Servia	Dinar	.19.3	.3226	.900	5.	.900	5.	.835	.17.4
Bulgaria	Lew	.19.3	.3226	.900	5.	.900	5.	.835	.17.4
Netherlands	Florin	.40.2	.672	.900	10.	.945	3.57	.640	.09.5
Algeria	Franc	.19.3	.3226	.900	5.	.900	5.	.835	17.4
Tunis	Franc	.19.3	.3226	.900	5.	.900	5.	.835	.17.4
Java, etc	Florin	.40.2	.672	.900	10.	.945	3.57	.640	.09.5
Philippine Islands	Peso	.98.3	1.691	.875	25.96	.900	25.96	.900	.97.1
Hawaii	Dollar	1.00	1.672	.900	26.729	.900	25.	.900	.93.5

*Depreciated paper has forced circulation; gold at a premium.

52 2. Table entitled "Annual price of silver in London, per ounce, and commercial ratio of silver to gold, 1833 to 1900," given on page 45 of the book entitled "Statistical Abstract of the United States, 1900," prepared by the Bureau of Statistics, under the direction of the Secretary of the Treasury, and printed at the Government Printing Office, Washington, D. C., 1901, referred to as Exhibit B, testimony of Mack, C. C. A., record, page 14. Said table is as follows:

No. 21.—*Annual price of silver in London, per ounce, and commercial ratio of silver to gold, 1833 to 1900.*

[From the Report of the Director of the Mint on the Production of Precious Metals in the United States.]

Calendar year.	Lowest quotation.	Highest quotation.	Average quotation.	Value of a fine ounce at average quotation.	Commercial ratio.	Calendar year.	Lowest quotation.	Highest quotation.	Average quotation.	Value of a fine ounce at average quotation.	Commercial ratio.
	Pence.	*Pence.*	*Pence.*	*Dollars.*			*Pence.*	*Pence.*	*Pence.*	*Dollars.*	
1833	58⅜	59⅞	59 3/16	1.297	15.93	1867....	60⅜	61¼	60 5/16	1.328	15.57
1834	59⅛	60⅜	59 11/16	1.313	15.73	1868....	60½	61⅛	60⅛	1.326	15.59
1835	59½	60	59 11/16	1.308	15.80	1869....	60	61	60 7/16	1.325	15.60
1836	59⅛	60⅜	60	1.315	15.72	1870....	60⅛	60⅜	60 3/16	1.328	15.57
1837	59	60⅛	59 15/16	1.305	15.83	1871....	60 3/16	61	60⅛	1.326	15.57
1838	59⅛	60⅛	59⅛	1.304	15.85	1872....	59⅛	61⅛	60 5/16	1.322	15.63
1839	60	60⅛	60⅛	1.323	15.62	1873....	57⅞	59 11/16	59 7/16	1.29769	15.98
1840	60⅛	60⅜	60⅛	1.323	15.62	1874....	57⅛	59⅛	58 5/16	1.27883	16.16
1841	59⅜	60⅛	60 1/16	1.316	15.70	1875....	55⅛	57⅛	56 1/16	1.24233	16.64
1842	59⅛	60	59 7/16	1.303	15.87	1876....	46⅜	58⅛	53⅛	1.16414	17.75
1843	59	59⅛	59 1/16	1.297	15.93	1877....	53⅛	58⅛	54 1/16	1.20189	17.20
1844	59⅛	59⅜	59⅛	1.301	15.85	1878....	49⅛	55⅛	52⅛	1.15358	17.92
1845	58⅞	59⅛	59⅛	1.298	15.92	1879....	48⅞	53⅛	51⅛	1.12392	18.39
1846	59	60⅛	59 5/16	1.30	15.90	1880....	51⅛	52 15/16	52⅛	1.14507	18.05
1847	58⅛	60⅛	59 11/16	1.308	15.80	1881....	50⅞	52⅞	51⅛	1.13229	18.25
1848	58⅛	60	59⅛	1.304	15.85	1882....	50	52⅛	51 1/16	1.13562	18.20
1849	59⅛	60	59⅜	1.309	15.78	1883....	50 5/16	51 3/16	50 5/16	1 10874	18.64
1850	59⅛	61⅛	61 5/16	1.316	15.70	1884....	49⅛	51⅛	50 1/16	1.11068	18.61
1851	60	61⅛	61	1.337	15.46	1885....	46⅞	50	48 7/16	1.06510	19.41
1852	59⅜	61⅞	60⅛	1.326	15.59	1886....	42	47	45⅛	.99467	20.78
1853	60⅛	61⅞	61⅛	1.348	15.33	1887....	43⅛	47⅛	44 1/16	.97946	21.10
1854	60⅞	61⅞	61⅛	1.348	15.33	1888....	41⅛	44 5/16	42⅞	.93974	22.00
1855	60	61⅛	61 3/16	1.344	15.38	1889....	41 13/16	44⅞	42 1/16	.98511	22.10
1856	60⅛	62⅛	61 3/16	1.344	15.38	1890....	43⅛	54⅛	47⅛	1.04634	19.75
1857	61	62⅛	61⅞	1.353	15.27	1891....	43⅛	48⅞	45 1/16	.98800	20.92
1858	60⅞	61⅞	61 3/16	1.344	15.38	1892....	37⅞	43⅛	39⅛	.87145	23.72
1859	61⅛	62⅛	62 1/16	1.36	15.19	1893....	30⅛	38⅛	35 5/16	.78030	26.49
1860	61⅛	62⅛	61 11/16	1.352	15.29	1894....	27	31⅛	28 11/16	.63479	32.56
1861	60½	61⅛	60 13/16	1.333	15.50	1895....	27 3/16	31⅛	29 1/16	.65406	31.60
1862	61	62⅛	61 7/16	1.346	15.35	1896....	29⅛	31 15/16	30 1/16	.67565	30.59
1863	61	61⅞	61⅛	1.345	15.37	1897....	23⅛	29 1/16	27 5/16	.60483	34.20
1864	60⅛	62⅛	61⅛	1.345	15.37	1898....	25	28⅛	26 1/16	.59010	35.03
1865	60⅛	61⅛	61 1/16	1.338	15.44	1899....	26⅛	29	27 7/16	.60154	34.36
1866	60⅛	62⅛	61⅛	1.339	15.43	1900....	27	30⅛	28 5/16	.62007	33.33

53 HENRY M. HOYT,
Solicitor-General.
ALBERT COMSTOCK. A. B. B.,
Counsel for Respondents.

DECEMBER 30, 1904.

54 (Indorsement on cover:) File No. 19513. Supreme Court U. S., October term, 1904. Term No. 413. The United States, petitioner, *vs.* Morris Whitridge et al., etc. Stipulation and addition to record. Filed, Jan. 10, 1905.

O

In the Supreme Court of the United States.

OCTOBER TERM, 1904.

THE UNITED STATES, PETITIONER,
v.
MORRIS WHITRIDGE AND RICHARD J. WHITE, trading as Whitridge, White & Co., respondents.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT, AND BRIEF THEREON.

The Solicitor-General, on behalf of petitioner, respectfully prays for a writ of certiorari to review a decree of the United States circuit court of appeals for the fourth circuit in the above-entitled cause affirming a decree of the circuit court of the United States for the district of Maryland. Both decrees denied the right of the Secretary of the Treasury to order reliquidation of the entry of certain goods imported from India and invoiced in rupees, at a valuation of the rupee different from that of the pure metal contained therein as proclaimed by him at the beginning of the quarter year.

7096—04——1

This case required construction of the law *now in force* prescribing how foreign coins and money shall be estimated for tariff purposes.

The Government contends that the Secretary of the Treasury, under section 25, tariff act of 1894—which is still in effect—had power to order reliquidation of the entry in question at the real, exchange or market value of the rupee of the invoice, so that duty might be assessed upon actual cost prices and equality preserved as to imports from all countries; and that his action was conclusive. The importers insist that, irrespective of cost to them or its exchange or market value, the rupee could not be estimated higher than the valuation placed on the silver therein, and that they were entitled to enter goods far below their actual cost price. In this the courts below sustained them.

If the Government's contentions be finally overruled the Treasury Department estimates that it will be necessary to repay *more* than a million dollars of duties already collected; the revenue hereafter may be very adversely affected by the closing of mints in any country where silver is now freely coined; great inequality between importers as to past transactions will be sanctioned, and possibly still greater ones may occur in the future; and the spirit of our foreign treaties, which provide that no higher duties shall be imposed on goods of the contracting nation than upon those of the most favored, will be violated.

After painstaking investigation the officers of the Department of Justice concur with Treasury officials

in believing the lower courts committed manifest error, and that great wrong will result unless their action is corrected. The Government only seeks to require importers of goods from all countries to pay duty on actual values—to enforce equality irrespective of the money standard of the exporting country—in harmony with provisions of tariff laws in effect for more than a century. It does not believe—as respondents contend and as the courts below held—that goods from India should have been estimated, for tariff purposes, at only two-thirds of their cost, while imports from all gold standard countries were rigidly assessed at actual values. That would directly conflict with the well-defined policy of our tariff legislation, would defeat *pro tanto* the express purpose of the act, of which the section in question is a part, "to provide revenue," would occasion great injustice to citizens who imported goods from countries having a gold standard, and would grossly violate the just spirit of our treaties.

I ask, therefore, for this cause special consideration, and deem that its importance justifies a fuller statement than petitions for *certiorari* ordinarily require. The issues now presented are *radically* different from those, determination of which was necessary to the decision of *United States* v. *Beebe*, wherein *before final determination* below a writ of certiorari was asked for and denied by this court, October term, 1900 (180 U. S., 640). This case has been carefully framed to present, without complications, the Government's exact contentions, in order to obtain a final authoritative decision thereof upon their merits.

The Secretary of the Treasury ordered a reliquidation at what he determined, upon proof satisfactory to himself, to be the value of the rupee, under authority of the proviso in section 25, tariff act of August 27, 1894 (28 Stat., 552), which follows. And upon the construction of this section, *never repealed*, when read in the light of its history and the evils intended to be redressed, decision of the cause must depend.

> SEC. 25. That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint, and be proclaimed by the Secretary of the Treasury immediately after the passage of this act and thereafter quarterly on the first day of January, April, July, and October in each year. And the values so proclaimed shall be followed in estimating the value of all foreign merchandise exported to the United States during the quarter for which the value is proclaimed, and the date of the consular certification of any invoice shall, for the purposes of this section, be considered the date of exportation: *Provided*, That the Secretary of the Treasury may order the reliquidation of any entry at a different value, whenever satisfactory evidence shall be produced to him showing that the value in United States currency of the foreign money specified in the invoice was, at the date of certification, at least ten per centum more or less

than the value proclaimed during the quarter in which the consular certification occurred.

STATEMENT OF CASE.

Respondents imported from India into Baltimore June 18, 1900, gunny bagging. The invoice, dated April 29, 1900, was made out in rupees and contained a consular certificate that the exchange value of the rupee was thirty-two (32) cents. April 1, 1900, the Treasury Department, as required by section 25, tariff act of 1894, proclaimed a table of values of foreign coins in which the standard for India was stated to be silver, the monetary unit the rupee, and its value in United States gold twenty and seven-tenths cents ($0.207). To the table was appended this footnote: "Value of the rupee to be determined by consular certificate." (Appendix C.) (The same note had appeared upon all quarterly estimates for a number of years.) (Record, 16.)

In July, 1900, the collector liquidated the entry by converting rupees into dollars at $0.32 each—to which action protest was made.

May 29, 1901, the collector reliquidated the entry by converting rupees into dollars at $0.207 each and transmitted to the Treasury entry and invoice. June 6, 1901, the Secretary returned both with the advice and directions following (Record, 17):—

> I have to inform you that satisfactory evidence has been produced to the Secretary of the Treasury, showing that the value in United States currency of the foreign money of the

> invoice, namely, the rupee of India, was thirty-two cents at the date of certification, which is 10 per cent more than the value proclaimed during the quarter in which the consular certification occurred. In view of the facts stated you are hereby directed to reliquidate the entries hereinbefore mentioned on the basis of this latter value under the authority conferred upon the Secretary of the Treasury by the proviso to section 25 of the act of August 28, 1894.

The collector, June 12, 1901, again reliquidated the entry by converting rupees into dollars at thirty-two cents each. Seasonable protest was made and the matter carried before the Board of General Appraisers. (R., 17.)

The importers insisted that under section 25, act of 1894, the Secretary had no power to order reliquidation of entry at a value for the rupee different from its pure metal value proclaimed at the beginning of the quarter unless, as a matter of fact—which was open to inquiry and proof—the value of the metal therein when invoice was certified was 10 per cent more or less than the one so proclaimed.

The Government maintained:—

1. The action of the Secretary in declaring the value of the foreign money specified in the invoice when he ordered reliquidation of entry under section 25, act of 1894, was final and conclusive and could not be reviewed or the facts upon which same was based inquired into by appraisers or courts.

2. The proviso in section 25, act of 1894, gave the

Secretary the right to direct reliquidation of an entry at the *exchange* value of the money specified in the invoice whenever that was 10 per cent more or less than the metallic value proclaimed at beginning of the quarter, and such right did not depend on a change in the market value of the metal in the coin.

Proof was taken, and over objection importers undertook to show the value of the silver in a rupee when the invoice was certified was not more or less by 10 per cent than its proclaimed value. (R., 12.)

The Board decided against the Government and ordered the collector to reliquidate the entry according to the metallic value of the rupee proclaimed by the Secretary April 1, 1900, viz, twenty and seven-tenths cents ($0.207)—in other words, to admit the goods at less than two-thirds of what they actually cost in India. The circuit court sustained the Board without opinion, and the circuit court of appeals affirmed the decree in an opinion found in the record.

In this case the Government has admitted *nothing* in reference to the value of the silver in a rupee, nor has it admitted anything concerning the reasons or ground for the Secretary's action in ordering a reliquidation at a different valuation of the rupee from the one proclaimed—except what appears above in his directions to the collector—or how he determined the valuation fixed by him. It denies importer's right to show by proof anything in reference thereto. A stipulation containing admissions on these points was in *United States* v. *Beebe*, hereinafter referred to, upon which stress was laid by the lower court.

The tariff administrative act, July 31, 1789, c. 5 (1 Stat., 29), provided:—

> SEC. 18. That all foreign coins and currency shall be estimated according to the following rates: Each pound sterling of Great Britain, $4.44. * * * Each rupee of Bengal at 55½ cents, and all other denominations of money in value as near as may be to the said rates; and the invoices of all importations shall be made out in the currency of the place or country from whence the importation shall be made, and not otherwise.

Values were prescribed for certain foreign coins by similar statutes prior to 1873. (Act August 4, 1790, sec. 40, 1 Stat., 167; act March 2, 1799, sec. 61, 1 Stat., 627; act March 3, 1801, 2 Stat., 121; act June 28, 1834, 4 Stat., 700; act July 27, 1842, 5 Stat., 496; act March 3, 1843, 5 Stat., 625; act May 22, 1846, 9 Stat., 14.)

In 1873 Congress, departing from former practice, required annual valuation of foreign coins by the Director of the Mint and proclamation of same by the Secretary of the Treasury. Act of March 3, 1873, c. 268 (17 Stat., 602), (R. S., 3564), provided:—

> SEC. 1. That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the Director of the Mint, and be proclaimed on the first day of January by the Secretary of the Treasury.

The tariff act of October 1, 1890, c. 1244 (26 Stat., 567, 624), modified the act of 1873 by requiring a quarterly estimate and proclamation. It provided:—

> SEC. 52. That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint, and be proclaimed by the Secretary of the Treasury immediately after the passage of this act and thereafter quarterly on the first day of January, April, July, and October in each year.

"AN ACT TO REDUCE TAXATION, TO PROVIDE REVENUE FOR THE GOVERNMENT, AND FOR OTHER PURPOSES," August 27, 1894 (28 Stat., C. 349, 509, 552), provides:—

> SEC. 25. [This section is set out in full, p. 4, *ante*. It was not repealed by the tariff act of 1897, is now in full force, and constitutes the present law providing how foreign coins and money shall be estimated.]

The policy of Congress as to *ad valorem* duties, shown in the first customs administrative act and all others, is to assess them on imports substantially at their *actual cost or market value*, and to effect this invoices in currency of the exporting country are required. The purpose to arrive at such actual cost or value is accentuated by the strict provisions of the customs administrative act of June 10, 1890. (Act July 31, 1789, c. 5, secs. 17, 18, 1 Stat., 29; act

August 4, 1790, c. 35, secs. 39 and 40, 1 Stat., 167; act March 2, 1799, c. 22, sec. 61, 1 Stat., 627; act March 3, 1801, c. 28, sec. 2, 2 Stat., 121; section 2903 R. S.; act June 10, 1890, c. 407, 26 Stat., 131.)

Section 10, act June 10, 1890, provides:—

> That it shall be the duty of the appraisers of the United States, and every of them, and every person who shall act as such appraiser, or of the collector, as the case may be, by all reasonable ways and means in his or their power, to ascertain, estimate, and appraise (any invoice or affidavit thereto or statement of cost, or of cost of production to the contrary notwithstanding) the actual market value and wholesale price of the merchandise at the time of exportation to the United States in the principal markets of the country whence the same has been imported, and the number of yards, parcels or quantities and actual market value or wholesale price of every of them, as the case may require.

(See also sections 3, 4, 5, 7, 11, etc.)

Section 21, act June 22, 1874 (18 Stat., c. 391, p. 190), and section 24, act June 10, 1890 (26 Stat., 140), permit reliquidation of entry within a year.

The following from the treaty with Japan (1894) illustrates our obligations to other nations:

> ARTICLE IV. No other or higher duties shall be imposed on the importation into the territories of the United States of any article, the produce or manufacture of the territories of His Majesty, the Emperor of Japan, * * *

than on the like article produced or manufactured in any other foreign country; * * *

FACTS RELATING TO THE COINAGE AND DECLINE OF SILVER.

To understand the purpose of Congress in enacting the proviso in section 25, act of 1894—an act to raise revenue—consideration must be given to conditions then existing, and to certain facts relating to silver.

For more than a hundred years prior to 1873, except in 1808, 1812, and 1813, the average market value of 16 ounces of silver was in excess of 1 ounce of gold—an ounce of pure silver was worth more than $1.29 in gold, and variations in average yearly prices were very small. (Appendix E.)

A decline in the market value of silver began in the last of 1873 and, with some temporary fluctuations, continued, until in July, 1876, an ounce of fine silver was worth $1.0768. The price then increased, until in January, 1877, it was $1.26. Thereafter, with some fluctuations year after year, there was a gradual fall, until in June, 1889, the average price per ounce was $0.921, and the bullion value of the silver dollar $0.712. From the latter date until April, 1890, the value gradually increased, the average for March, 1890, being $0.962. Congress was then in session and was expected to enact legislation favorable to silver. It passed what is known as the Sherman act July 14, 1890.

Commencing in the last of April, 1890, the price of silver began rapidly to appreciate, and in September,

1890, the average per ounce was $1.164—a rise of more than 20 per cent in less than six months. Immediately after this rise the act of October 1, 1890, requiring quarterly estimates by the Bureau of the Mint, was passed.

The Secretary of the Treasury, January 1, 1890, proclaimed, as directed by the act of 1873, the value of the rupee to be $0.332. Under the act of 1890 he proclaimed its value, as of October 1, to be $0.404. After October, 1890, silver rapidly declined, the average price per ounce for June, 1893, being $0.817, and for July, 1894, $0.628. (Appendixes D and F.)

On June 24, 1893, when rumors became current that the Indian mints were to be closed, the quotation for silver per ounce in London was 37½d, in New York $0.82. On June 26, when it was definitely announced that the mints had been closed, silver in London was 36d, equal to $0.784 per ounce fine, and in New York $0.78. The rapid decline continued until on June 30 the London price was 30½d, equal to $0.664 per ounce fine, and the New York price $0.67 to $0.65. (Report, Director of the Mint, 1893, p. 18.)

Only twice in history has the market value of silver changed so much as 10 per cent in any quarter year—once in 1890 and once in 1893.

Conspicuous among the well known causes which contributed to the great depreciation of silver was the closing of the Indian mints, to which something like one-fourth of the world's annual production had gone.

Prior to June 26, 1893, those mints were open to

the free, unlimited coinage of the silver rupee, the standard coin of the country. The value of that coin declined, following silver, from $0.48, in 1873, to $0.29, April 1, 1893. The exchange value, coinage being free, followed, of course, the fluctuations in the value of the bullion, the slight difference between the two being controlled by such facts as ordinarily determine the price of foreign exchange.

In 1892 the British Government appointed The Indian Currency Committee (Lord Herschell's) and charged it with the duty of making a report concerning the coinage of India. After thorough examination of currency systems, May 31, 1893, the committee made an exhaustive report, wherein, after expressing the opinion that so to do would result in further depreciating the market price of silver but would steady the exchange value of the rupee and cause the same thereafter greatly to advance, it recommended that the Indian mints be closed. Without previous notice this was done June 26, 1893. The *immediate* result was an appreciation in the exchange value of the rupee and a radical depreciation in the market value of the silver therein. And such values have been wide apart from that day to this.

On June 21, 1893, the bullion value of the rupee was $0.287, its exchange value $0.303; on June 30 the former was $0.228 and the latter $0.322. In ten days the metallic value declined more than 18 per cent, while the exchange value advanced nearly 5 per cent. From July 1, 1893, until October 1, 1894, the

average exchange value of the rupee was *more than 20 per cent* greater than its metallic value. (Appendixes A and B.)

July 1, 1894, the Secretary of the Treasury proclaimed the metallic value of the rupee as $0.217; on the same day its exchange value was $0.261. The tariff act of 1894 was passed in August.

The report of the Indian Currency Committee attracted wide attention and was regarded as so important that 6,000 copies of it were printed by direction of Congress. It was much read and commented upon. It *distinctly* pointed out that while closing the Indian mints would probably result in further depreciating silver, nevertheless the exchange value of the rupee would thereby be increased and would gradually advance to 1s. 4d. ($0.32). The result proved in harmony with the committee's anticipation and was watched with great interest throughout this country.

As appendixes (A and B) hereto are printed tables prepared by the Bureau of the Mint, which confirm foregoing statements. Reference is also made to the report of the Indian Currency Committee.

In January, 1898, the exchange value of the rupee reached 1s. 4d. ($0.32), where it has since remained. The value of the silver in a rupee at that time was $0.20. By an act of the Indian government, passed September 15, 1899—the outcome of the report of the Indian currency committee of 1898—gold became legal tender in that country. Mr. Finley, secretary to the governor, speaking of its effect, said: "India has at

length emerged from a period of transition in her currency; has reached the goal for which she has been struggling for years; has established a gold standard and a gold currency, and has attained that practical fixity in exchange which has brought a relief alike to the private individual and to the government finances." It made gold legal tender at the rate of 15 rupees to 1 sovereign and left the rupee likewise legal tender to an unlimited amount, thus placing the silver coin of India in relation to gold in a condition similar to that existing in France and the United States. (Report Director of the Mint, 1900, p. 154 et seq.) The silver rupee became in reality only a token coin, like the silver dollar of the United States.

HISTORY OF THE PROVISO IN SECTION 25, ACT OF 1894.

The facts ascertainable from Congressional Records are meager. The bill when first before the Senate provided:—

> SEC. 52. That the value of foreign coin as expressed in the money of account of the United States shall be of that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint and be proclaimed by the Secretary of the Treasury immediately after the passage of this act, and thereafter quarterly on the first day of January, April, July, and October in each year.

This was the language of section 52, tariff act, October 1, 1890, which modified act March 3, 1873.

On June 20, 1894, the committee recommended section 52 be amended by adding the following:—

Collector Richards Wall. 246-259. 1.

> And the values so proclaimed shall be followed in estimating the value of all foreign merchandise exported to the United States during the quarter for which the value is proclaimed, and the date of the consular certification of any invoice shall, for the purposes of this section, be considered the date of exportation: *Provided*, That the Secretary of the Treasury may order the reliquidation of any entry at a different value whenever satisfactory evidence shall be produced to him showing that the value in United States currency of the foreign money specified in the invoice was at the date of certification at least ten per cent, more or less, than the value proclaimed during the quarter in which the consular certification occurred.

The amendment was agreed to without debate, and in the final arrangement section 52 as amended became section 25. (Congressional Record, vol. 26, Fifty-third Congress, second session, p. 6576.)

HISTORY OF LITIGATION TOUCHING THE VALUE OF THE RUPEE.

United States v. *Newhall* (91 F. R., 525), United States circuit court, Massachusetts, January 7, 1899, opinion by Colt, circuit judge.

In this case *no reliquidation* was ordered by the Treasury. The *collector* liquidated the entry in the first instance at the exchange value of the rupee instead of the proclaimed one, assuming it was depreciated cur-

rency. Judge Colt held the proviso in section 25, act of 1894, did not permit the *collector* to adopt the exchange value; and he further said (unnecessarily) that it did not authorize valuation of foreign coins according to exchange values by anyone, but that they should be estimated only according to price of the metal contained.

This case was not further prosecuted. A correct result was probably reached on the facts presented, because an estimate not based on the proclaimed value of the rupee was first made by the *collector*, and not by the Secretary when directing reliquidation. It was unnecessary to pass on other questions.

United States v. *Beebe*, U. S. circuit court, Massachusetts, August 27, 1900. (103 Fed. Rep., 785).

In this case also the *collector* liquidated the entry in the *first* instance at the exchange value of the rupee, and no reliquidation was directed by the Secretary. Colt, judge, said: "This petition for review is governed by the principles laid down in *United States* v. *Newhall*." (106 Fed. Rep., 75.)

An appeal was taken to the circuit court of appeals, first circuit, which declined to construe generally section 25, act of 1894, but held the collector erred by failing in the first liquidation to follow the proclaimed metallic value. The circuit court was for that reason sustained, but it was expressly adjudged without prejudice to either party to proceed further, after reliquidation under direction of the Secretary.

A petition for certiorari was presented to this court at the October term, 1900, and denied March 11, 1901 (180 U. S., 640). There was for such denial ample reason without consideration of the questions now involved. The judgment below was *not final* and *no reliquidation* had been ordered.

After the action of this court the collector reliquidated the entry at the proclaimed value of the rupee, and the Secretary informed him that upon satisfactory evidence he had found a different value and directed another reliquidation. The case was thereafter tried on an *agreed statement*, which contained a stipulation that the order for reliquidation by the Secretary was *not based* upon any *difference between the pure metal value of the rupee* on date of invoice and that proclaimed at the beginning of the quarter, and, further, that the *value fixed* by the Secretary was *not intended* to be the pure metal value on date of certification, the metallic value being then substantially the same as the one proclaimed. No such stipulation is in the present record, and it does not appear affirmatively *why* the Secretary adopted the value specified by him.

On the second trial of *United States* v. *Beebe*, September 4, 1902 (117 F. R., 670), the circuit court adhered to its opinion (unnecessarily expressed) in the *Newhall* case, that the Secretary should have been governed only by the metallic value of the coin. The court also said (correctly) that in the case then pending *it was expressly stipulated* the Secretary *did not* base his action upon any difference in metallic values, and that

the pure metal value of the rupee on date of invoice was substantially the same as the one proclaimed. It *accordingly* held that no *question of fact* upon which the Secretary had passed was involved, but only questions of law. Basing such action upon the *stipulation*, the contention of the Government as to the finality of the Secretary's action was overruled.

The circuit court of appeals affirmed the judgment of the circuit court. (*United States* v. *Beebe*, 122 F. R., 762, March 10, 1903. Opinion by Putnam, J.)

Its conclusion seems to have resulted from an entire misapprehension of conditions existing when the act of 1894 was passed. They are stated in *important* particulars as being exactly the reverse of what they were.

Discussing the proviso, the court said (p. 764):—

> Previous to June, 1893, the mints of India had been bound by law to the free public coinage of silver into rupees, and therefore the rupee circulated at its bullion value. * * *
>
> Thus it will be seen that the silver rupee, like our silver dollar, had, at the time this merchandise was invoiced, a practical value as legal tender far in excess of the bullion value at which, according to law, it was rated by the Director of the Mint; and these changes in value accrued after the act of 1894 went into effect. Previous to that act there were no differences with regard to the rupee of the character which we have described as existing in 1898. The prior differences were such as arose from the fluctuations of the marketable price of

silver. * * * [The facts set out above show statements in this paragraph to be erroneous].

(P. 768). The reason for this proviso can be suggested only by the fact of the numerous violent fluctuations in the market value of silver and in the corresponding market value of rupees, which we have fully explained, and this brings us under the leadership of the safest guide for the construction of a statute, already referred to; that is, the consideration of the causes which moved the legislature. The circumstance that the legal tender value of the rupee far exceeded its bullion value, which is now presented, did not exist when the act of 1894 was passed, and it could not have been in contemplation of Congress. In fact, it may be said never to have previously existed so far as known to our customs system. [It had existed for more than a year and was notorious.]

In view of the effect given the stipulation in the *Beebe* litigation, it seemed proper to submit the present case in which the Government could finally present to this court its exact contentions on all points. In this the collector liquidated the entry at the proclaimed value of the rupee. The Secretary thereafter notified the collector that *satisfactory evidence having been produced to him* showing the value in United States currency of the foreign money in the invoice, the rupee of India, was $0.32 at the date of the certification, which was 10 per cent more than the value proclaimed for the quarter in which the consular certification occurred, and directed reliquidation of the entry at $0.32 per rupee under

authority of section 25, act 1894. The circuit court decided against the Government and its judgment was affirmed by the circuit court of appeals March 14, 1904, in an opinion written by Boyd, district judge (129 F. R., 33). That opinion follows the cases in the courts in Massachusetts, above referred to, without adding anything of importance.

ARGUMENT.

I.

The action of the Secretary of the Treasury declaring the value of the foreign money specified in the invoice, when he ordered reliquidation of the entry under section 25, act of 1894, was final and conclusive, and could not be reviewed or the facts upon which same was based inquired into by appraisers or courts.

Section 25 has two important parts: First, the provisions for valuing foreign coins from the act of 1873 requiring an annual estimate, as modified by the act of 1890 requiring quarterly estimates; and, second, the proviso relating to reliquidation, which was entirely new legislation.

The action of the Secretary, if taken in pursuance of the power given by either part of the section, should have the same ultimate effect. No reason appears why, if his action under the provisions adopted from prior legislation was purposely made conclusive, the same finality was not intended to result when he proceeded under the new provision incorporated in the same section and relating to the same subject.

This court, in cases decided prior to 1894, settled

the conclusiveness of the Secretary's valuations of foreign coins under the acts of 1873 and 1890.

Collector v. *Richards*, 23 Wall., 246.
Cramer v. *Arthur*, 102 U. S., 612.
Hadden v. *Merritt*, 115 U. S., 25.
United States v. *Klingenberg*, 153 U. S., 93.

In *Hadden* v. *Merritt* (May 4, 1885) the invoice was in Mexican dollars, the value of which had been improperly estimated. The importer offered to prove that such dollars, instead of being worth $1.01 as proclaimed, at date of the proclamation were worth only $0.87; that such valuation had been reached by wrongfully comparing the Mexican silver dollar with the American silver dollar, instead of basing the estimate on the gold dollar; and that duties were being charged upon his goods at a valuation much in excess of cost. The evidence was rejected. This court, speaking by Mr. Justice Matthews, said (p. 27):—

> The value of foreign coins, as ascertained by the estimate of the Director of the Mint and proclaimed by the Secretary of the Treasury, is conclusive upon custom-house officers and importers. No errors alleged to exist in the estimate, resulting from any cause, can be shown in a judicial proceeding to affect the rights of the Government or individuals. There is no value, and can be none, in such coins except as thus ascertained; and the duty of ascertaining and declaring their value, cast upon the Treasury Department, is the performance of an executive function, requiring skill and the exercise of judgment and discretion,

> which precludes judicial inquiry into the correctness of the decision. If any error, in adopting a wrong standard, rule, or mode of computation, or in any other way, is alleged to have been committed, there is but one method of correction. That is to appeal to the Department itself. * * * The whole subject is confided by the law exclusively to the jurisdiction of the executive officers charged with the duty, and their action can not be otherwise questioned.

United States v. *Klingenberg* (April, 1894).

The goods were from Austria, the invoice in paper florins, worth in American money $0.32. They were converted by the collector at $0.482, according to the proclaimed valuation of the gold florin This resulted in charging duties on the goods at a valuation greatly exceeding their cost. The importer protested and unsuccessfully claimed he was entitled to show the facts and have the entry reliquidated. Speaking of those provisions which required invoices in currency of the exporting country, and the Director of the Mint to ascertain the value of foreign coins, this court, Mr. Justice Jackson delivering the opinion, said (p. 99):—

> These provisions being substantially reenactments of former laws, must, upon well-settled principles, be interpreted in the light of the decisions already referred to, and the estimate of the Director of the Mint, as proclaimed by the Secretary of the Treasury, fixing the values of foreign coin or currency in terms of the money of account of the United States, must

> be held equally conclusive both upon the Government and the importer as under the former statutes.

The above cited cases establish the conclusiveness of the Secretary's action in proclaiming values of foreign coins when proceeding under the first part of section 25, act of 1894. The Government contends that when he acted in this case under the second part of the same—the proviso—his action was likewise conclusive. He passed on facts, not law.

No affirmative evidence shows in the present case that the Secretary's instruction to the collector to reliquidate the entry by valuing the rupee at $0.32 was not based on that coin's metallic value. No affirmative proof and no agreement shows the ground upon which the Secretary acted or why he fixed the specified value, and the Government objected to the introduction of evidence on that subject. The importer undertook to prove that between the beginning of the quarter and date of consular certificate the rupee's metallic value had not varied as much as 10 per cent; but what evidence was before the Secretary, or upon what he based his valuation, the record does not show. There was a *stipulation* covering this in the *Beebe* case.

Judge Boyd, in his opinion (Record, 39), says:—

> It is conceded that if the ascertained metallic value of the silver rupee of India, either that made by the Director of the Mint at the first of the quarter and proclaimed by the Secretary, or a metallic value determined by the Secretary

> under the proviso of section 25, had been adopted by the collector in making the reliquidation of invoices of the appellees' goods on the 12th of June, 1901, under the decisions before cited, such action by the collector would have been conclusive. But the collector did not do this. On the other hand, acting under instructions from the Secretary of the Treasury, he adopted as a basis of liquidation the commercial value of the rupee, as certified by the American consul at Calcutta, at the date of the invoices.

It is respectfully suggested nothing supports the statement contained in the last two sentences of the quotation, nor is it shown that the Secretary's action was not based upon what *he* decided to be the rupee's metallic value. The figures adopted were the same as the exchange value, but nothing shows they were accepted alone for that reason.

In *United States* v. *Beebe* (117 F. R., 670), Colt, circuit judge, said:—

> (P. 677.) The order for reliquidation of an entry by the Secretary of the Treasury upon evidence satisfactory to him, based on the required difference between the pure-metal value of the foreign money specified in the invoice and the proclaimed value, is conclusive, and the action of the collector thereunder is not reviewable by the Board of General Appraisers or the courts. But this is not the issue presented in the case at bar. The importers are not seeking to impeach the order for reliquidation by evidence that the Secretary's finding of fact respecting the difference between the pure-metal value

> of the rupee and its proclaimed value at the date of the consular certifications was erroneous. There is no such question involved in the present case. On the contrary, it is stipulated that the order for reliquidation was not based upon any difference in metal values, and that the pure-metal value of the rupee on the dates specified was substantially the same as the proclaimed value.

Judge Colt's decision against the conclusiveness of the valuation fixed by the Secretary (and his reasoning was adopted by the appellate court) was based upon the stipulation in the record. The letter of the Secretary ordering reliquidation of the entry in the present case, ante, page 5, shows that he intended to follow the proviso in section 25, and no competent proof establishes that he acted in conflict therewith or adopted figures not based on metallic values.

Objection may be made to giving the Secretary power to order, with conclusive effect, reliquidation at a different valuation of foreign money from the one proclaimed. Objections were urged against his power to conclusively determine and proclaim valuations, but this court upheld it, notwithstanding, as in the cases of *Hadden* v. *Merritt* and *United States* v. *Klingenberg*, the importer was required to pay excessive charges. The Government now only seeks to impose duties upon actual values, in harmony with the well-defined purpose of all customs legislation.

As shown *ante*, in 1900, when the present importation was made, India was really upon the gold standard. That fact should have been proclaimed by the Secretary prior to April 1, 1900. He erred in stating then that India's standard was silver; for the real standard was the English sovereign and the rupee had become a token coin representing the one-fifteenth part thereof. And since it does not appear upon what basis the Secretary, upon reliquidation, estimated the rupee, it may be inferred that he treated the sovereign as the standard and reckoned the rupee, with substantial accuracy, as one-fifteenth part thereof.

II.

The proviso in section 25, act of 1894, gave the Secretary of the Treasury the right to direct reliquidation of an entry at the exchange value of the money specified in the invoice whenever that was 10 per cent more or less than the metallic value proclaimed at beginning of the quarter, and such right did not depend on a change in the market value of the metal in the coin.

The word "value," in section 25, as therein used, has radically different significations.

The value of *standard* foreign *coin* is the thing referred to in the first part of the section, whereas in the proviso it is value of "the foreign *money* specified in the invoice." The value of such *coin* must be primarily determined by the Director of the Mint, an expert as to metallic values. The proviso, which in this instance carves nothing out of what had theretofore been expressed, gives an entirely new power—delegated to

no one by the preceding part of the section—to the Secretary of the Treasury and imposes upon him alone the duty of ascertaining the value of "the foreign money." No specific words oblige him to base estimates upon the market price of any metal, but such words do restrict the Director of the Mint.

The first part of section 25 (the old law) provides, in effect, that the value (relative worth) of a standard foreign *coin* (not a token coin), as expressed in the money of account of the United States, shall be that (the value—the market value) of the metal contained therein; and that such value (market value of metal in the coin) shall be determined quarterly by the Mint, be proclai med by the Secretary, and be followed in estimating the value (that is, the invoice, cost, or market price) of imported goods.

The proviso, I submit, provides, in effect, that the Secretary may order reliquidation of any entry at a different value (that is, invoice, cost, or market price of goods) on satisfactory evidence showing the value in United States currency (that is, the market value) of the *foreign money* specified in the invoice (which may include token coins) was 10 per cent, more or less, than the value (that is, market value of the metal) proclaimed.

The first of the section requires the value of foreign *coins* to be determined by market price of the metal therein; under the proviso the value of the foreign *money*—not coin—specified in the invoice should likewise be determined by its market price.

The act is sufficiently doubtful to require construction.

The new legislation in the proviso must be read in the light of former laws and facts known at the time of enactment, detailed *ante*.

It is part of an act "to provide revenue for the Government," and should not be construed to defeat that purpose.

The policy of Congress in all tariff legislation has been to impose *ad valorem* duties upon actual or market values. The last customs administrative act (June 10, 1890), contains stringent provisions to that effect. All laws affecting collection of such duties must therefore be read with this fixed policy in view.

Prior to 1873, when the act requiring annual valuations of foreign coins was passed, fluctuations in silver had been very slight, and such estimates then appeared adequate to secure imposition of duties upon the true value of imports with substantial accuracy.

From 1873 to 1890 the trend of silver was downward, and as the valuation of foreign coins made at the first of each year was followed during the same, the Treasury gained revenue in those years, since duties were on the average estimated upon a sum greater than goods from silver countries had really cost.

In prospect and as a result of the Sherman Act of July, 1890, the market value of silver rapidly rose, and in about five months preceding October 1, 1890, appreciated more than 20 per centum. The values of foreign silver coins proclaimed January 1, 1890, were much below their real values during a large part of

that year. Consequently, during such time goods from silver-standard countries were entered and assessed for duty below their real values, the revenue suffered, and material inequalities were occasioned.

To meet the specified difficulties and effect its fixed policy of assessing duties upon real values, Congress by act of October 1, 1890, so amended the act of 1873 as to require a *quarterly* valuation of foreign coins. Such modification then seemed adequate therefor.

After October 1, 1890, silver rapidly declined. The Indian Currency Committee, in May, 1893, made its report recommending closing the Indian mints, which action it said would probably cause still further decline in silver, but would steady exchange and bring about a gradual rise in the rupee's exchange value until it should attain 16*d.* or $0.32. The mints were closed June 26; the exchange and metallic values of the rupee *at once* separated by a wide margin, the former appreciating, the latter depreciating, and during the whole time thereafter up to October 1, 1894, these values were on an average 20 per cent apart.

The report of the Currency Committee attracted much attention and was extensively read in the United States, where the effect of closing the mints was watched with unusual interest. Congress knew the conditions when it enacted the revenue law of August 27, 1894. During more than a year before that date goods from India paid for, of course, in rupees at exchange valuation, had, under the laws of 1873 as modified in 1890, been estimated for duties at the

metal value of the rupee and consequently much under cost price. The Treasury had been deprived of revenue, material and unjust advantage had been gained by importers of Indian goods over those who brought in like goods from other countries, the spirit of our treaties requiring equal treatment of all imports was being infringed, and it was probable (as afterwards proved the case) that the exchange and metallic values of the rupee would separate still further, thereby intensifying the troubles. The old law corrected at the beginning of each quarter inequalities arising from fluctuation in the value of silver, well known for twenty years; but it provided no way to correct the ill effects caused by the radical difference between the exchange and metallic values of the rupee occasioned by closing the Indian mints in the preceding year.

In August, 1894, two obvious obstacles prevented assessment of imports from India at actual values.

The first, a minor one and of long standing, was caused by fluctuations in the market value of silver during a quarter. This was corrected quarterly, losses and gains therefrom might offset each other, and as the trend of silver had for years been downward the Treasury had gained more than it lost thereby.

The second difficulty, a most serious one and recently developed, arose from the fact that the real cost to the American importer of goods from India was determined by the exchange value of the rupee, which since the mints were closed had been and then was largely in excess of its metallic value, according to

which the law required entries to be liquidated. This, for more than a year just passed, had caused and was then causing most unjust discriminations and great losses of revenue, with still greater ones in prospect. In respect of the second difficulty, no matter how great it might become, the old law provided no possible corrective at any time.

Notwithstanding it knew the existing conditions and what was expected to happen in the future, we are asked to believe that Congress did not intend by this new legislation of 1894—incorporated in a measure to "provide revenue for the Government"—to correct the most serious defect in the old law, then causing disastrous results. And we are told that while not intending to correct this well known and most serious defect—the daily results of which were most unfortunate—with great care a remedy was provided for a negligible matter well known when the act of 1890, providing for quarterly estimates, was passed and from which no great future damage could be anticipated.

I submit that no rational man would pursue such an unwise course in his own affairs, and that no construction of its language necessitating such a conclusion concerning Congressional action should be accepted when another is possible. The court must assume that the lawmaker intended to act with at least ordinary wisdom and prudence.

Since July 1, 1893, there has not been a change of 10 per cent in the market price of silver in any quarter, and when the act of August, 1894, was passed, there was no good reason to expect such a thing.

If the construction of the proviso by the courts below is correct it has been absolutely ineffective and was passed without prospect of becoming useful.

The following rules of construction are valuable:—

> The most universal and effective way of discovering the true meaning of a law, when the words are dubious, is by considering the reason and spirit of it, or the cause which moved the legislature to enact it.
>
> Where a particular construction of a statute would occasion great inconvenience or produce inequality and injustice, that view is to be avoided if another and more reasonable interpretation is present in the statute.
>
> (Blackstone's Com., vol. 1, p. 61; *Knowlton* v. *Moore*, 178 U. S., 41–77.)

Both rules justify the construction asked by the Government. That will tend to bring about assessment of imports at their cost, in harmony with the policy of Congress; it will prevent serious inequality among importers of like articles from different countries; it will avoid infringement of treaty obligations requiring equal treatment to the nations; and it will protect the Treasury against serious loss of revenue.

The construction contended for by the importers would defeat the beneficial ends above specified and cause great inequality, injustice, and loss by reason of past transactions, and possibly still worse consequences from future ones. If Mexico, or any other country now permitting free coinage of silver, should close its mints and the exchange value of its coins appre-

ciate in excess of their metallic value, under such construction the Treasury might be unable to protect the revenues, and other ills above suggested might immediately follow.

In *United States* v. *Beebe & Sons* (122 F. R, 762) Judge Putnam, after adopting as fundamental the first rule of construction above, strangely erred in saying:—

> The circumstance that the legal-tender value of the rupee far exceeded its bullion value, which is now presented, did not exist when the act of 1894 was passed, and it could not have been in the contemplation of Congress.

This statement conflicts with the facts, and is without support in the record of that case. The conclusion reached was equally erroneous.

The action of the Federal courts in Massachusetts seems to have controlled the opinion of the circuit court of appeals in the present case.

In view of the foregoing, in order to correct what the Government thinks has been a radically wrong interpretation of the statute, and to enable it to secure a final and authoritative adjudication of the important issues involved, I respectfully submit that the case should be brought before this court.

HENRY M. HOYT,
Solicitor-General.

J. C. MCREYNOLDS,
Assistant Attorney-General.

APPENDIX A.

Bullion and exchange value of the Indian rupee, 1850-1900.

[Prepared by Bureau of the Mint.]

Average for calendar year.	Bullion value of silver rupee.		Exchange value of rupee as determined by sale of India council bills in London.	
	Pence.	*Cents.*	*Pence.*	*Cents.*
1850	22.69	0.494	24¼	0.536
1851	22.66	.501	24¼	.534
1852	22.48	.497	23¾	.528
1853	22.85	.505	24¼	.534
1854	22.85	.505	23¾	.512
1855	22.78	.504	24¼	.534
1856	22.78	.504	25½	.556
1857	22.94	.507	24¼	.845
1858	22.78	.504	(Exchange was raised to a prohibitory rate.)	
1859	23.06	.510		
1860	22.92	.507		
1861	22.60	.500	23¾	.528
1862	22.83	.505	23¾	.528
1863	22.80	.504	23¾	.528
1864	22.80	.504	23¾	.528
1865	22.69	.502	23¾	.525
1866	22.71	.502	23	.509
1867	22.51	.502	23¼	.512
1868	22.48	.497	23¼	.512
1869	22.83	.497	23¼	.514
1870	22.51	.502	22½	.495
1871	22.48	.497	23¼	.512
1872	22.41	.496	22¾	.503
1873	21.99	.487	22.35	.494
1874	21.67	.480	22.22	.491
1875	21.06	.466	21.65	.479
1876			20.49	.453

Bullion and exchange value of the Indian rupee, 1850–1900—Continued.

Average for calendar year.	Bullion value of silver rupee.		Exchange value of rupee as determined by sale of India council bills in London	
Average for month:	Pence.	Cents.	Pence.	Cents.
January	20.62	0.419	.....	.....
April	20.04	.400	.....	.....
July	18.26	.368	.....	.....
October	19.63	.390	.....	.....
1877.	.....	.....	a20.79	0.459
January	21.38	.424	.....	.....
April	20.11	.402	.....	.....
July	19.97	.406	.....	.....
October	20.37	.412	.....	.....
1878.	.....	.....	a19.76	.437
January	19.97	.403	.....	.....
April	20.09	.414	.....	.....
July	19.53	.399	.....	.....
October	18.78	.388	.....	.....
1879.	.....	.....	a19.96	.441
January	18.69	.378	.....	.....
April	16.26	.374	.....	.....
July	19.16	.392	.....	.....
October	19.57	.387	.....	.....
1880.	.....	.....	19.96	.441
January	19.51	.393	.....	.....
April	19.32	.394	.....	.....
July 1	19.58	.398	.....	.....
October 1	19.42	.392	.....	.....
1881.	.....	.....	19.80	.440
January 1	19.19	.387	.....	.....
April 1	19.37	.391	b19⅞	b.403
July 1	19.18	.389	b19⅝	b.396
October 1	19.25	.388	b19⅞	b.403
1882.				
January 1	19.25	.389	b20	b.405
April 1	19.35	.395	20⅛	b.408
July 1	19.30	.393	b20	b.405
October 1	19.23	.390	b19⅞	b.403
1883.				
January 1	18.63	.376	b19⅜	b.393
April 1	18.91	.383	b19⅝	b.393
July 1	18.74	.382	b19⅝	b.393
October 1	18.92	.384	b19⅝	b.398
1884.				
January 1	18.95	.383	b19⅜	b.395
April 1	18.83	.385	b19¾	b.400
July 1	18.83	.381	b19⅜	b.395
October 1	18.88	.382	b19¾	b.393

a Average for the year.

b Average by months.

Bullion and exchange value of the Indian rupee, 1850–1900—Continued.

Average for calendar year.	Bullion value of silver rupee.		Exchange value of rupee as determined by sale of India council bills in London.	
Average for month—Continued.				
1885.	*Pence.*	*Cents.*	*Pence.*	*Cents.*
January 1	18.53	0.375	19¼	0.388
April 1	18.21	.370	18⅞	.383
July 1	18.30	.371	18⅞	.379
October 1	17.65	.358	18¼	.367
1886.				
January 1	17.44	.355	17⅞	.362
April 1	17.35	.353	17⅞	.362
July 1	16.58	.338	16⅞	.342
October 1	16.58	.334	17⅜	.352
1887.				
January 1	17.18	.347	18	.365
April 1	16.85	.382	17	.344
July 1	16.35	.330	16⅞	.342
October 1	16.51	.333	16⅞	.342
1888.				
January 1	16.54	.335	17⅛	.347
April 1	15.93	.323	16⅜	.332
July 1	15.66	.319	16⅛	.327
October 1	16.12	.328	16½	.334
1889.				
January 1	15.82	.321	16⅜	.332
April 1	15.68	.319	16⅛	.329
July 1	15.61	.318	16⅛	.327
October 1	15.84	.322	16⅜	.332
1890.				
January 1	16.40	.331	17⅛	.347
April 1	16.30	.331	17⅛	.355
July 1	17.24	.359	18⅛	.379
October 1	19.14	.388	19¼	.388
1891.				
January 1	17.93	.362	18⅜	.372
April 1	16.72	.340	17	.344
July 1	17.23	.350	17½	.355
October 1	16.72	.337	17	.344
1892.				
January 1	16.25	.327	16⅛	.329
April 1	14.82	.301	15⅛	.309
July 1	14.93	.304	15⅛	.309
October 1	14.17	.287	14⅞	.302
1893.				
January 1	14.24	.287	14⅛	.299
April 1	14.17	.287	14⅛	.296
July 1	12.44	.251	15⅛	.302
October 1	12.68	.256	15⅛	.309

Bullion and exchange value of the Indian rupee, 1850–1900—Continued.

Average for calendar year.	Bullion value of silver rupee.		Exchange value of rupee as determined by sale of India council bills in London.	
Average for month—Continued.				
1894.	*Pence.*	*Cents.*	*Pence.*	*Cents.*
January 1	11.71	0.237	14⅛	0.291
April 1	10.50	.214	13⅛	.276
July 1	10.68	.217	12⅞	.261
October 3	10.85	.220	13¼	.269
1895.				
January 1	10.12	.206	12⅞	.258
April 1	11.42	.233	13⅝	.271
July 1	11.35	.231	13⅜	.266
October 1	11.38	.232	13⅝	.279
1896.				
January 1	11.33	.231	13⅞	.281
April 1	11.54	.236	14⅛	.289
July 1	11.71	.238	14⅛	.286
October 1	11.26	.228	14⅜	.291
1897.				
January 1	11.08	.224	15⅛	.307
April 1	10.57	.215	15	.304
July 1	10.24	.208	15	.304
October 1	9.71	.196	.....	.....
1898.				
January	9.89	.200	15 1/16	.323
April 1	9.54	.192	15 1/16	.323
July 1	10.08	.204	15 1/32	.321
October 1	10.47	.211	15 1/16	.323
1899.				
January 1	10.15	.205	16	.324
April 1	10.20	.207	16	.324
July 1	10.31	.209	16	.324
October 1	9.96	.202	16⅛	.327
1900.				
January 1	10.08	.205	16 3/32	.328
April 1	10.22	.207	16	.324
July 1	10.50	.213	16	.324
October 1	.....	.....	.....	.....

APPENDIX B.

Bullion and exchange value of the Indian rupee from June 15 to December 30, 1893.

[Prepared by Bureau of the Mint.]

Date.	Bullion value of silver rupee.		Rate of exchange in Calcutta (demand bills) on London.	
1893.	*Pence.*	*Cents.*	*Pence.*	*Cents.*
June 15	14.30	0.290	14 3/32	0.302
16	14.30	.289	14 1/32	.303
17	14.30	.289	15	.304
19	14.40	.291	15	.304
20	14.30	.289	15	.304
21	14.21	.287	14 1/32	.303
22	14.12	.286	15	.304
23	14.12	.286	15 3/32	.306
24	13.93	.281	15 5/32	.307
26	13.37	.270	15 4/32	.307
27	13.00	.262	15 1/32	.312
28	12.63	.254	16	.324
29	11.70	.236	15 11/32	.323
30	11.33	.228	15 10/32	.322
July 1	12.41	.251	15 7/32	.321
3	12.44	.251	15 7/32	.321
5	12.91	.261	15	.319
7	12.68	.256	15 7/32	.321
8	12.26	.248	15 1/32	.320
10	12.31	.250	15 5/32	.317
11	12.26	.247	15	.319
12	12.26	.247	15 1/32	.320
13	12.26	.247	15	.319
14	12.40	.253	15 1/32	.318
15	12.49	.252	15 2/32	.319
17	12.54	.253	15 1/32	.318
18	12.44	.252	15 1/32	.318
19	12.26	.247	15 1/32	.318
20	12.17	.245	15 3/32	.317
21	12.03	.243	15 1/32	.316
22	11.93	.241	15	.314
24	11.93	.241	15 7/32	.313
25	11.98	.242	15 4/32	.315
26	12.03	.243	15 4/32	.315
27	12.07	.243	15 1/32	.313
28	12.07	.243	15 2/32	.312
29	12.07	.243	15	.312
31	12.07	.243	15 1/32	.312

Bullion and exchange value of the Indian rupee from June 15 to December 30, 1893—Continued.

Date.	Bullion value of silver rupee.		Rate of exchange in Calcutta (demand bills) on London.	
1893.	*Pence.*	*Cents.*	*Pence.*	*Cents.*
Aug. 1	12.14	0.244	15 1/16	0.313
2	12.17	.245	15 1/16	.313
3	12.26	.247	15 1/16	.313
4	12.35	.249	15 1/16	.313
5	12.44	.251	15 1/16	.312
7	Holiday in India.		15 1/16	.313
8	12.63	.256	15 1/16	.313
9	12.82	.261	15 1/4	.314
10	12.91	.263	15 1/16	.316
11	12.86	.260	15 1/4	.314
12	12.82	.259	15 1/16	.313
14	12.34	.254	15 1/4	.312
15	12.44	.253	15 1/4	.312
16	12.44	.252	15 3/16	.310
17	12.44	.252	15 1/16	.305
18	12.54	.254	14 7/8	.302
19	12.54	.254	15	.304
21	12.63	.257	15 1/16	.305
22	12.91	.263	14 15/16	.303
23	12.96	.262	14 15/16	.303
24	12.86	.260	14 7/8	.302
25	12.63	.256	14 13/16	.300
26	12.63	.256	14 3/4	.299
28	12.63	.256	14 13/16	.300
29	12.63	.256	14 13/16	.300
30	12.82	.260	14 13/16	.300
31	12.82	.260	15 1/16	.305
Sept. 1	12.63	.256	15 1/16	.307
2	12.58	.255	15 1/16	.305
4	12.58	.255	15	.304
5	12.58	.255	15 1/16	.305
6	12.58	.255	15 1/16	.308
7	12.63	.256	15 1/16	.308
8	12.72	.258	15 1/4	.307
9	12.72	.257	15 3/16	.308
11	12.82	.259	15 3/16	.308
12	12.82	.259	15 1/4	.307
13	12.72	.257	15 1/4	.307
14	12.68	.256	15 3/16	.307
15	12.68	.256	15 3/16	.306
16	12.72	.257	15 1/4	.307
18	12.77	.258	15 1/16	.308
19	12.82	.259	15 3/16	.308
20	12.72	.257	15 1/4	.307
21	12.68	.256	15 1/4	.307

Bullion and exchange value of the Indian rupee from June 15 to December 30, 1893—Continued.

Date.	Bullion value of silver rupee.		Rate of exchange in Calcutta (demand bills) on London.	
1893.	*Pence.*	*Cents.*	*Pence.*	*Cents.*
Sept. 22	12.58	0.255	15 1/2	0.307
23	12.58	.255	15 1/2	.307
25	12.58	.256	15 3/16	.306
26	12.68	.256	15 1/16	.305
27	12.68	.257	15 1/16	.305
28	12.68	.257	15 1/16	.305
29	12.68	.257	15	.304
30	12.68	.257	14 15/16	.303
Oct. 2	12.68	.256	14 15/16	304
3	12.58	.255	15 1/16	.305
4	12.58	.254	15 1/16	.305
5	12.58	.254	15 1/16	.305
6	12.58	.254	15 1/16	.305
7	12.58	.254	15 3/16	.306
9	12.58	.254	.....	.....
10	12.61	.255	15 3/16	.306
11	12.58	.254	15 5/32	.307
12	12.54	.254	15 5/32	.307
13	12.49	.253	15 1/8	.308
14	12.49	.253	15 1/8	.308
16	12.51	.253	15 5/32	.307
17	12.51	.253	.....	.....
18	12.54	.253	.....	.....
19	12.54	.253	.....	.....
20	12.54	.253	.....	.....
21	12.54	.253	15 1/8	.308
23	12.58	.254	15 1/32	.308
24	12.61	.254	.....	.....
25	12.54	.253	.....	.....
26	12.42	.251	15 3/16	.307
27	12.35	.249	15 3/16	.307
28	12.31	.248	15 1/8	.308
30	12.08	.242	15 1/8	.308
31	11.76	.236	15 5/32	.307
Nov. 1	11.70	.236	15 5/32	.307
2	11.89	.240	15 5/32	.307
3	11.89	.240	15 1/8	.308
4	11.93	.241	15 1/8	.308
6	12.03	.243	15 3/16	.307
7	12.10	Holiday in New York.		
8	12.17	.246	.....	.....
9	12.12	.244	.....	.....
10	12.05	.243	15 1/32	.308
11	12.00	.243	.....	.....
13	11.98	.242	15 1/32	.308
14	11.93	.241	15 1/2	.309

Bullion and exchange value of the Indian rupee from June 15 to December 30, 1893—Continued.

Date.	Bullion value of silver rupee.		Rate of exchange in Calcutta (demand bills) on London.	
1893.	*Pence.*	*Cents.*	*Pence.*	*Cents.*
Nov. 15	11.91	0.241	15½	0.309
16	11.91	.241	15½	.309
17	12.03	.243	15½	.309
18	12.17	.246	.....	.....
20	12.00	.243	15½	.309
21	11.98	.243	15¼	.309
22	11.98	.243	15¼	.309
23	12.03	.243	15¼	.309
24	12.03	.243	15¼	.309
25	11.93	.242	15 3/8	.310
27	11.93	.242	15 3/8	.310
28	11.93	.241	15 3/8	.310
29	11.89	.241	15¼	.309
30	11.89	Holiday United States.	15 7/16	.308
Dec. 1	11.87	.240	15 7/16	.308
2	11.87	.240	15 7/16	.308
4	11.87	.240	15 7/16	.308
5	11.87	.240	15 7/16	.308
6	11.91	.242	15 7/16	.308
7	11.98	.243	15 7/16	.308
8	11.93	.242	15 3/8	.307
9	11.89	.241	15 3/8	.307
11	11.89	.241	15¼	.307
12	11.89	.241	15¼	.307
13	11.89	.241	15 5/16	.305
14	11.89	.241	15 5/16	.305
15	11.89	.241	15 5/16	.305
16	11.89	.241	15 3/8	.306
18	11.89	.241	15 3/8	.306
19	11.98	.243	15 3/8	.306
20	12.00	.244	15 7/16	.305
21	11.93	.242	15 3/8	.306
22	11.93	.242	15 7/16	.307
23	11.93	.242	.....	.....
26	Holiday in London.		.....	.....
27	11.93	.242	15¼	.307
28	11.80	.241	15 3/8	.306
29	11.70	.240	15 5/16	.305
30	11.80	.240	15 3/8	.306

APPENDIX C.

Values of foreign coins.

1900.
Department Circular No. 39.

TREASURY DEPARTMENT,
BUREAU OF THE MINT,
Washington, D. C., April 1, 1900.

Hon. LYMAN J. GAGE,
Secretary of the Treasury.

SIR: In pursuance of the provisions of section 25 of the act of August 28, 1894, I present in the following table an estimate of the values of the standard coins of the nations of the world: [a]

Values of foreign coins.

Country.	Standard.	Monetary unit.	Value in terms of U. S. gold dollar.	Coins.
Argentine Republic	Goldand silver.	Peso	$0.965	Gold: Argentine ($4.824) and ½ argentine. Silver: Peso and divisions.
Austria-Hungary	Gold	Crown	.203	Gold: Former system — 4 florins ($1.929), 8 florins ($3.858), ducat ($2.287), and 4 ducats ($9.149). Silver: 1 and 2 florins. Gold: Present system—20 crowns ($4.052): 10 crowns ($2.026).
Belgium	Gold and silver.	Franc	.193	Gold: 10 and 20 francs. Silver: 5 francs.
Bolivia	Silver	Boliviano	.436	Silver: Boliviano and divisions.
Brazil	Gold	Milreis	.546	Gold: 5, 10, and 20 milreis. Silver: ½, 1, and 2 milreis.
*	*	*	*	*
France	Goldand silver.	Franc	.193	Gold: 5, 10, 20, 50, and 100 francs. Silver: 5 francs.
German Empire	Gold	Mark	.238	Gold: 5, 10, and 20 marks.

[a] The coins of silver-standard countries are valued by their pure silver contents, at the average market price of silver for the three months preceding the date of this circular.

Values of foreign coins—Continued.

Country.	Standard.	Monetary unit.	Value in terms of U. S. gold dollar.	Coins.
Great Britain	Gold	Pound sterling	$4.866½	Gold: sovereign (pound sterling) and ½ sovereign.
Greece	Gold and silver.	Drachma	.193	Gold: 5, 10, 20, 50, an 1 100 drachmas. Silver: 5 drachmas.
Haiti	Gold and silver.	Gourde	.965	Silver: gourde.
India	Silver	Rupee[a]	.297	Gold: mohur ($7.105). Silver: rupee and divisions.
Italy	Gold and silver.	Lira	.193	Gold: 5, 10, 20, 50, and 100 lire. Silver: 5 lire.
Japan	Gold	Yen	.498	Gold: 5, 10, and 20 yen. Silver: 10, 20, and 50 sen.
Liberia	Gold	Dollar	1.000	
Mexico	Silver	Dollar	.473	Gold: dollar ($0.983), 2½, 5, 10, and 20 dollars. Silver: dollar (or peso) and divisions.
*	*	*		*

[a] Value of the rupee to be determined by consular certificate.

Respectfully,

GEO. E. ROBERTS,
Director of the Mint.

[Only a part of circular is here printed, omissions being indicated by asterisks.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., April 1, 1900.

The foregoing estimate by the Director of the Mint, of the values of foreign coins, I hereby proclaim to be the values of such coins in terms of the money of account of the United States, to be followed in estimating the value of all foreign merchandise exported to the United States on or after April 1, 1900, expressed in any of such metallic currencies.

L. J. GAGE,
Secretary of the Treasury.

APPENDIX D.

[Report of the Director of the Mint, 1897. Pages 196–203.]

XXXIX.—Highest, lowest, and average price of silver bullion, and value of an ounce fine, bullion value of a United States silver dollar, and commercial ratio of silver to gold, from July 1, 1873, to June 30, 1897.

Fiscal years.	Highest.	Lowest.	Average London price per ounce standard, 0.925.	Equivalent value of ounce fine with exchange at par, $4.8665.	Equivalent value of ounce fine based on average price of exchange.	Bullion value of a United States silver dollar at average price of silver, exchange at par.	Commercial ratio of silver to gold.
1873.	*Pence.*	*Pence.*	*Pence.*				
July	59⅛	59 5/16	59.344	$1.30089	$1.29982	$1.00824	15.89
August	59 3/16	58 13/16	59.000	1.29332	1.28186	1.00030	15.98
September	59⅛	58 13/16	58.968	1.29247	1.27864	.99964	15.99
October	59	58⅛	58.750	1.28786	1.26069	.99607	16.05
November	58⅛	57½	58.000	1.27142	1.23981	.98336	16.25
December	58 1/16	58	58.036	1.27031	1.26136	.98250	16.27
1874.							
January	59⅛	58	58.750	1.28786	1.28795	.99607	16.05
February	59	58⅛	58.750	1.28786	1.28954	.99607	16.05
March	59⅛	58⅛	58.937	1.29196	1.29422	.99925	16.00
April	59⅛	58 3/16	58.906	1.29579	1.29619	1.00221	15.95
May	58⅛	58⅛	58.687	1.28648	1.29798	.99524	16.06
June	59	58⅛	58.750	1.28786	1.29805	.99607	16.05
Average	a 59⅛	a 57½	58.739	1.28784	1.28217	.99458	16.05
July	58⅛	58⅛	58.375	1.27964	1.28793	.98972	16.15
August	58⅛	57½	58.000	1.27142	1.28018	.98336	16.25
September	58	57⅛	57.687	1.26456	1.26671	.97805	16.34
October	57 13/16	57⅛	57.718	1.26524	1.26807	.97858	16.33
November	58⅛	57⅛	58.000	1.27142	1.27756	.98336	16.25
December	57⅛	57½	57.500	1.26046	1.26836	.97488	16.40
1875.							
January	57⅛	57⅛	57.562	1.26182	1.27243	.97593	16.38
February	57⅛	57⅛	57.437	1.25902	1.26050	.97877	16.41
March	57⅛	57	57.125	1.27090	1.24800	.98760	16.18
April	57⅛	57⅛	57.250	1.25498	1.26104	.97064	16.47
May	57	56⅛	56.562	1.23990	1.24844	.95898	16.67
June	55⅛	55⅛	55.687	1.22072	1.22975	.94415	16.77
Average	a 58½	a 55⅛	57.408	1.26050	1.26408	.97491	16.38

a Denotes highest and lowest for each year.

XXXIX.—*Highest, lowest, and average price of silver bullion, etc.*—Cont'd.

Fiscal years.	Highest.	Lowest.	Average London price per ounce standard, 0.925.	Equivalent value of ounce fine with exchange at par, $4.8665.	Equivalent value of ounce fine based on average price of exchange.	Bullion value of a United States silver dollar at average price of silver, exchange at par.	Commercial ratio of silver to gold.
1875.	*Pence.*	*Pence.*	*Pence.*				
July	55$\frac{7}{8}$	55$\frac{1}{16}$	55.781	$1.22278	$1.22868	$0.94576	16.90
August	56$\frac{1}{8}$	56	56.312	1.23442	1.24038	.95474	16.74
September	56$\frac{3}{8}$	56$\frac{1}{16}$	56.218	1.23236	1.22368	.95315	16.77
October	57$\frac{1}{8}$	56$\frac{3}{8}$	56.987	1.24922	1.23856	.96619	16.54
November	56$\frac{13}{16}$	56$\frac{1}{8}$	56.781	1.24470	1.24304	.96269	16.60
December	56$\frac{1}{8}$	56$\frac{1}{8}$	56.375	1.23580	1.24151	.95581	16.72
1876.							
January	56$\frac{1}{8}$	54$\frac{7}{8}$	55.500	1.21662	1.22175	.94097	16.99
February	54$\frac{7}{8}$	53	53.937	1.18236	1.18356	.91448	17.48
March	54$\frac{1}{8}$	52$\frac{1}{8}$	53.375	1.17004	1.17809	.90495	17.60
April	54	53$\frac{1}{8}$	53.750	1.17826	1.18395	.91131	17.54
May	54	52	53.000	1.16182	1.16981	.89859	17.79
June	52	50	51.000	1.11797	1.12567	.86447	18.49
Average	a57$\frac{1}{8}$	a50	54.917	1.20386	1.20655	.93109	17.18
July	51$\frac{1}{8}$	46$\frac{7}{8}$	49.125	1.07687	1.08429	.83277	19.19
August	53$\frac{7}{8}$	50$\frac{1}{2}$	52.000	1.13990	1.14634	.88184	18.13
September	52$\frac{5}{16}$	51$\frac{1}{8}$	51.843	1.13936	1.13372	.88122	18.14
October	53$\frac{1}{8}$	52	52.812	1.15770	1.15258	.89540	17.85
November	55	53$\frac{1}{8}$	54.062	1.19733	1.17860	.92605	17.26
December	58$\frac{1}{8}$	55$\frac{1}{8}$	56.875	1.24676	1.24100	.96429	16.58
1877.							
January	58$\frac{1}{8}$	56$\frac{1}{8}$	57.567	1.26193	1.25843	.97602	16.38
February	57$\frac{1}{8}$	56	56.875	1.24676	1.24356	.96429	16.58
March	56$\frac{1}{8}$	53$\frac{1}{2}$	54.687	1.19880	1.19473	.92928	17.24
April	55	53$\frac{1}{8}$	54.250	1.19012	1.19374	.92048	17.36
May	54$\frac{1}{8}$	53$\frac{1}{8}$	54.125	1.18648	1.19485	.91766	17.42
June	54	53$\frac{1}{8}$	53.750	1.17826	1.18637	.91131	17.54
Average	a58$\frac{1}{8}$	a46$\frac{7}{8}$	53.997	1.18502	1.18401	.91671	17.47
July	54$\frac{1}{8}$	53$\frac{1}{8}$	54.187	1.18782	1.19260	.91870	17.40
August	54$\frac{1}{8}$	54	54.125	1.18648	1.18538	.91766	17.42
September	55$\frac{1}{8}$	54$\frac{1}{8}$	54.750	1.20018	1.20005	.92826	17.22
October	55$\frac{1}{8}$	54$\frac{1}{8}$	55.125	1.20840	1.20604	.93462	17.10
November	55	54	54.500	1.19470	1.19065	.92402	17.30
December	54$\frac{1}{8}$	53$\frac{7}{8}$	54.000	1.18372	1.18649	.91553	17.46
1878.							
January	54	53$\frac{1}{8}$	53.750	1.17826	1.17426	.91131	17.54
February	55$\frac{1}{8}$	53$\frac{13}{16}$	54.593	1.19672	1.19219	.92558	17.27
March	55	54$\frac{1}{8}$	54.562	1.19606	1.19987	.92507	17.28
April	54$\frac{1}{8}$	53$\frac{7}{8}$	54.062	1.18510	1.19228	.91660	17.44
May	53$\frac{7}{8}$	53$\frac{1}{8}$	53.562	1.17405	1.17812	.90805	17.60
June	53$\frac{7}{16}$	52$\frac{1}{8}$	52.968	1.16112	1.16314	.89805	17.80
Average	a55$\frac{1}{8}$	a52$\frac{1}{8}$	54.182	1.18780	1.18842	.91862	17.40

a Denotes highest and lowest for each year.

XXXIX.—*Highest, lowest, and average price of silver bullion, etc.*—Cont'd.

Fiscal years.	Highest.	Lowest.	Average London price per ounce standard, 0.925.	Equivalent value of ounce fine with exchange at par, $4.8665.	Equivalent value of ounce fine based on average price of exchange.	Bullion value of a United States silver dollar at average price of silver, exchange at par.	Commercial ratio of silver to gold.
1878.	*Pence.*	*Pence.*	*Pence.*				
July	52 1/2	52 1/16	52.562	$1.15222	$1.15304	$0.89117	17.94
August	52	52	52.437	1.14948	1.15385	.88905	17.98
September	52	51	51.812	1.13577	1.13659	.87844	18.20
October	51 1/16	49	50.531	1.10769	1.10621	.85672	18.66
November	50	50	50.562	1.10837	1.10917	.85725	18.65
December	50 1/4	49	50.093	1.09809	1.10069	.84930	18.82
1879.							
January	51	49	50.031	1.09673	1.10054	.84825	18.84
February	50	49	49.875	1.09331	1.09837	.84560	18.90
March	50	48	49.562	1.08645	1.09272	.84030	19.02
April	50	49	49.812	1.09193	1.09631	.84458	18.92
May	51	50	50.875	1.11526	1.12131	.86258	18.53
June	53	51	52.250	1.14538	1.15303	.88587	18.04
Average	a 53	a 48	50.866	1.11505	1.11848	.86242	18.54
July	52	51	51.685	1.13167	1.13412	.87597	18.26
August	51 1/2	52	51.601	1.13030	1.12534	.87421	18.28
September	51	51	51.3125	1.13030	1.12439	.87421	18.28
October	53	51 1/16	52.271	1.14674	1.13980	.88093	18.02
November	53	53	53.386	1.17003	1.16319	.90194	17.66
December	53	52	52.5975	1.15222	1.14761	.89117	17.94
1880.							
January	52	52 1/16	52.480	1.15085	1.14700	.89011	17.96
February	52 1/16	52	52.326	1.14674	1.14594	.88693	18.02
March	52	51	51.995	1.14126	1.14511	.88269	18.11
April	52	51	51.975	1.13989	1.14953	.88163	18.13
May	52	52 1/16	52.131	1.14126	1.14726	.88269	18.11
June	52	52 1/16	52.454	1.15085	1.15712	.89011	17.96
Average	a 53	a 51	52.218	1.14436	1.14397	.88509	18.06
July	52 1/16	52	52.687	1.15496	1.15348	.89328	17.90
August	52 1/16	51	52.635	1.14400	1.14873	.88481	18.06
September	52 1/16	52	52.437	1.14674	1.14246	.88901	18.02
October	52 1/16	51	52.143	1.14400	1.13798	.88481	18.06
November	51 1/16	51	51.75	1.13441	1.12698	.87739	18.21
December	52	51	51.82	1.13578	1.12669	.87845	18.20
1881.							
January	51	51	51.28	1.12345	1.11821	.86891	18.40
February	52	51	51.41	1.13578	1.13407	.87845	18.20
March	52	52	52.19	1.14400	1.13616	.88481	18.06
April	52 1/16	52	52.07	1.14126	1.13397	.88269	18.11
May	52	51	51.66	1.13304	1.13396	.87633	18.24
June	51	51	51.33	1.12482	1.12532	.86997	18.37
Average	a 52	a 51	51.937	1.13852	1.13508	.88057	18.15

a Denotes highest and lowest for each year.

XXXIX.—*Highest, lowest, and average price of silver bullion, etc.*—Cont'd.

Fiscal years.	Highest.	Lowest.	Average London price per ounce standard, 0.925.	Equivalent value of ounce fine with exchange at par, $4.8665.	Equivalent value of ounce fine based on average price of exchange.	Bullion value of a United States silver dollar at average price of silver, exchange at par.	Commercial ratio of silver to gold.
1881.	*Pence.*	*Pence.*	*Pence.*				
July	52¼	50⅞	51.355	$1.12619	$1.12454	$0.87103	18.35
August	51⅞	51¼	51.559	1.12893	1.12543	.87315	18.31
September	51 3/16	51⅛	51.706	1.13441	1.12833	.87739	18.22
October	52⅛	51⅞	51.895	1.13715	1.13199	.87951	18.17
November	52	51⅞	51.487	1.12893	1.13396	.87315	18.31
December	52	51⅞	51.889	1.13715	1.13282	.87951	18.17
1882.							
January	52⅛	51⅞	51.980	1.13989	1.14121	.88163	18.13
February	52⅛	52	52.028	1.13989	1.14937	.88163	18.13
March	52 1/16	51 13/16	51.963	1.13852	1.14700	.88057	18.15
April	52⅛	52 1/16	52.122	1.14126	1.15081	.88269	18.11
May	52⅛	52⅛	52.223	1.14263	1.15386	.88375	18.09
June	52⅛	51⅞	52.016	1.13979	1.13879	.88163	18.13
Average	a 52⅛	a 50⅛	51.812	1.13623	1.13817	.87880	18.19
July	52	51⅛	51.8177	1.13578	1.14079	.87845	18.20
August	52 1/16	51⅛	51.974	1.13989	1.14659	.88163	18.13
September	52 1/16	51⅛	51.913	1.13715	1.14291	.87951	18.17
October	51 13/16	51¼	51.75	1.13441	1.13350	.87739	18.22
November	51¼	51	51.39	1.12619	1.12258	.87103	18.35
December	51	50	50.48	1.10701	1.10306	.85620	18.67
1883.							
January	50⅛	50⅛	50.264	1.10153	1.10058	.85196	18.76
February	51	50⅛	50.6025	1.10813	1.10912	.85706	18.65
March	51 1/16	50⅛	51.022	1.11797	1.11302	.86447	18.49
April	50⅞	50⅛	50.572	1.10811	1.10704	.85705	18.65
May	50 15/16	50 1/16	50.206	1.10140	1.10198	.85186	18.76
June	50 15/16	50 1/16	50.187	1.10160	1.10835	.85201	18.76
Average	a 52 1/16	a 50	51.023	1.11826	1.11912	.86490	18.48
July	50⅛	50 1/16	50.375	1.10510	1.10862	.85472	18.75
August	50 15/16	50⅛	50.524	1.10754	1.10831	.85661	18.66
September	50⅛	50⅛	50.731	1.11205	1.11047	.86010	18.58
October	51	50⅞	50.914	1.11649	1.11305	.86353	18.64
November	50⅛	50¼	50.702	1.11172	1.10887	.85954	18.59
December	51	50 15/16	50.843	1.11440	1.11117	.85191	18.54
1884.							
January	51	50⅛	50.865	1.11501	1.11667	.86239	18.53
February	51⅛	51	51.135	1.12093	1.12832	.86696	18.44
March	51⅛	50⅛	50.937	1.11659	1.12513	.86361	18.51
April	51	50⅛	50.757	1.11265	1.12118	.86056	18.57
May	50⅛	50⅛	50.839	1.11459	1.11856	.86206	18.54
June	50⅛	50⅛	50.800	1.11359	1.11318	.86129	18.56
Average	a 51⅛	a 50 1/16	50.791	1.11339	1.11529	.86115	18.56

a Denotes highest and lowest for each year.

XXXIX.—*Highest, lowest, and average price of silver bullion, etc.*—Cont'd.

Fiscal years.	Highest.	Lowest.	Average London price per ounce standard, 0.925.	Equivalent value of ounce fine with exchange at par, $4.8665.	Equivalent value of ounce fine based on average price of exchange.	Bullion value of a United States silver dollar at average price of silver, exchange at par.	Commercial ratio of silver to gold.
1884.	*Pence.*	*Pence.*	*Pence.*				
July	50⅞	50 1/16	50.788	$1.11333	$1.10991	$0.86109	18.56
August	50⅝	50⅛	50.779	1.11313	1.10953	.86093	18.57
September	50 1/16	50⅛	50.738	1.11224	1.10956	.86024	18.58
October	50⅜	50 7/16	50.724	1.11193	1.10744	.86000	18.59
November	50 7/16	49 13/16	50.007	1.09623	1.09241	.84994	18.86
December	49⅝	49¼	49.641	1.08818	1.08590	.84163	18.99
1885.							
January	50	49⅛	49.688	1.08836	1.09089	.84177	18.99
February	49¼	48⅛	49.125	1.07791	1.07505	.83390	19.18
March	49 3/16	49	49.094	1.07561	1.07610	.83191	19.22
April	49⅛	48⅞	49.375	1.07773	1.08299	.83334	19.18
May	50	48⅞	49.437	1.07929	1.08915	.83476	19.15
June	49⅛	49	49.125	1.07751	1.07818	.83338	19.18
Average	a 50⅛	a 48⅛	49.843	1.09262	1.09226	.84507	18.92
July	49 3/16	49⅛	49.156	1.07839	1.07768	.83406	19.17
August	49 3/16	48 7/16	48.812	1.07045	1.07075	.82792	19.31
September	48⅛	47⅛	47.812	1.04395	1.04166	.80534	19.80
October	47 5/16	47⅛	47.406	1.03967	1.03887	.80411	19.88
November	47⅛	47 1/16	47.406	1.03950	1.03587	.80398	19.88
December	47⅛	46⅞	47.187	1.03303	1.03338	.79819	20.01
1886.							
January	47	46 7/16	46.733	1.02444	1.02951	.79234	20.17
February	46⅞	46⅛	46.685	1.02339	1.02852	.79152	20.19
March	46⅞	46 1/16	46.766	1.02517	1.02999	.79290	20.16
April	46 1/16	46	46.386	1.01683	1.02032	.78645	20.33
May	46	44⅜	45.425	.99577	1.00046	.77016	20.76
June	45½	44 1/16	44.835	.98283	.98768	.76015	21.03
Average	a 49 3/16	a 44 1/16	47.038	1.03112	1.03295	.79750	20.04
July	44⅛	42	43.873	.96175	.96395	.74385	21.49
August	42⅛	42	42.310	.92748	.92333	.71734	22.28
September	44⅛	42⅛	43.841	.96105	.96691	.74331	21.50
October	45⅞	44⅛	45.089	.98840	.98333	.76446	20.91
November	47	45⅞	46.486	1.01903	1.01424	.78815	20.28
December	46⅛	45½	46.068	1.00986	1.00384	.78106	20.56
1887.							
January	47⅛	46½	46.833	1.02663	1.02560	.79403	20.13
February	47	46 1/16	46.660	1.02284	1.02669	.79110	20.21
March	46 7/16	44 3/16	45.440	.99610	.99706	.77042	20.75
April	44⅛	43½	43.964	.96374	.96490	.74539	21.44
May	43⅛	43 7/16	43.580	.95532	.95658	.73887	21.63
June	44½	43⅛	43.968	.96383	.96130	.74546	21.44
Average	a 47⅛	a 42	44.843	.98301	.98148	.76029	21.02

a Denotes highest and lowest for each year.

XXXIX.—*Highest, lowest, and average price of silver bullion, etc.*—Cont'd.

Fiscal years.	Highest.	Lowest.	Average London price per ounce standard, 0.925.	Equivalent value of ounce fine with exchange at par, $4.8665.	Equivalent value of ounce fine based on average price of exchange.	Bullion value of a United States silver dollar at average price of silver, exchange at par.	Commercial ratio of silver to gold.
1887.	*Pence.*	*Pence.*	*Pence.*				
July	44 1/16	43 1/4	44.148	$0.97777	$0.96335	$0.74850	21.36
August	45 3/16	44 1/4	44.570	.97702	.97154	.75566	21.15
September	45	44 1/16	44.642	.97860	.97287	.75688	21.12
October	44 1/4	43 1/16	44.159	.96802	.96442	.74870	21.35
November	44	43 1/4	43.840	.96102	.95788	.74328	21.51
December	45 1/4	43 1/16	44.368	.97260	.96972	.75224	21.25
1888.							
January	44 3/16	44 1/16	44.380	.97286	.97219	.75244	21.24
February	44 3/16	43 1/16	44.033	.96525	.96421	.74656	21.41
March	43 1/4	43	43.293	.94903	.95083	.73401	21.78
April	42 3/4	42 1/4	42.669	.93535	.93709	.72343	22.10
May	42 1/4	41 1/4	42.048	.92174	.92577	.71249	22.42
June	42 1/4	42	42.092	.92271	.92683	.71365	22.43
Average	a 45 3/16	a 41 1/4	43.675	.95741	.95617	.74008	21.59
July	42 3/16	42	42.111	.92312	.92634	.71418	22.39
August	42 1/4	41 1/16	42.007	.92085	.92251	.71221	22.44
September	44 1/4	42 1/16	43.160	.94612	.94971	.73176	21.84
October	43 1/4	42 3/4	43.097	.94474	.94697	.73069	21.88
November	43 1/4	42 3/4	43.029	.94325	.94595	.73163	21.85
December	42 3/4	42 1/16	42.516	.93200	.93581	.72084	22.18
1889.							
January	42 1/16	42 1/4	42.544	.93261	.93616	.72131	22.16
February	42 1/4	42 1/4	42.594	.93371	.93752	.72216	22.13
March	42 1/4	42 1/4	42.521	.93211	.93652	.72092	22.17
April	42 1/16	42 1/4	42.185	.92474	.92918	.71522	22.35
May	42 1/4	41 1/16	42.162	.92424	.92893	.71484	22.36
June	42 1/16	42	42.034	.92143	.92547	.71266	22.43
Average	a 44 1/4	a 41 1/16	42.499	.93163	.93510	.72055	22.18
July	42 1/16	42	42.159	.92417	.92638	.71462	22.36
August	42 5/16	42 1/4	42.349	.92834	.92959	.71801	22.26
September	42 1/16	42 1/4	42.522	.93213	.93477	.72944	22.17
October	43 1/4	42 1/4	42.944	.94382	.94036	.72998	21.90
November	44 1/4	43 1/4	43.923	.96284	.95959	.74469	21.46
December	44 1/4	43 1/4	43.967	.96381	.96894	.74544	21.44
1890.							
January	44 1/4	44 1/4	44.502	.97554	.97447	.75451	21.19
February	44 1/4	43 1/4	44.042	.96545	.96563	.74671	21.41
March	44 1/4	43 1/4	43.908	.96251	.96024	.74444	21.47
April	48	43 1/4	45.451	.96634	.99751	.74699	21.39
May	47 1/4	46	46.971	1.02966	1.02820	.79637	20.07
June	49	46 1/4	47.727	1.04623	1.04778	.80919	19.75
Average	a 49	a 42	44.196	.96883	.96839	.74932	21.33

a Denotes highest and lowest for each year.

XXXIX.—*Highest, lowest, and average price of silver bullion, etc.*—Cont'd.

Fiscal years.	Highest.	Lowest.	Average London price per ounce standard, 0.925.	Equivalent value of ounce fine with exchange at par, $4.8665.	Equivalent value of ounce fine based on average price of exchange.	Bullion value of a United States silver dollar at average price of silver, exchange at par.	Commercial ratio of silver to gold.
1890.	*Pence.*	*Pence.*	*Pence.*				
July	50⅛	47 7/16	49.201	$1.07854	$1.08367	$0.83418	19.16
August	54⅛	50⅛	52.707	1.15540	1.15643	.89363	17.89
September	54⅛	50	53.123	1.16452	1.15946	.90068	17.74
October	51⅛	48⅛	49.708	1.08966	1.08821	.84278	18.97
November	49⅛	45	47.305	1.03698	1.03404	.80183	19.93
December	49⅛	47⅛	48.135	1.05518	1.04939	.81611	19.59
1891.							
January	48⅛	46⅛	47.9399	1.05085	1.05034	.81276	19.67
February	46⅛	44⅛	45.5470	.99844	1.00202	.77223	20.70
March	45 5/16	44⅛	44.928	.98487	.98854	.76173	20.98
April	45	43⅛	44.528	.97610	.99453	.75495	21.17
May	45⅛	44⅛	44.481	.97507	.97805	.75415	21.20
June	46	44⅛	44.973	.98586	.98924	.76230	20.97
Average	a 54⅛	a 43⅛	47.714	1.04195	1.04780	.80588	19.83
July	46⅛	45⅛	46.002	1.00841	1.00825	.77994	20.49
August	46 1/16	44 1/16	45.112	.98890	.99390	.76485	20.90
September	45 1/16	44⅛	45.016	.98680	.97767	.76322	20.95
October	45	44 1/16	44.555	.97669	.97046	.75540	21.16
November	44 1/16	43⅛	43.690	.95773	.95257	.74044	21.58
December	44⅛	43⅛	43.775	.95959	.95517	.74195	21.54
1892.							
January	43⅛	41⅛	42.830	.93888	.93515	.72616	22.01
February	41⅛⅛	41⅛	41.460	.90885	.91106	.70293	22.74
March	41⅛	39	40.087	.87875	.89699	.67965	23.52
April	40⅛	39⅛	39.703	.86983	.87229	.66966	23.87
May	40⅛	39⅛⅛	40.060	.87816	.88029	.67920	23.53
June	41⅛	40 1/16	40.564	.88921	.89298	.68772	23.24
Average	a 46⅛	a 39	42.737	.93648	.93723	.72430	22.07
July	40 3/16	39 1/16	39.632	.86877	.87181	.67193	23.79
August	39 1/16	37⅛	38.295	.83947	.84203	.65136	24.62
September	38 1/16	38⅛	38.158	.83646	.83801	.64694	24.71
October	39⅛	38⅛	38.937	.85354	.85287	.66013	24.21
November	39⅛	38⅛	38.971	.85428	.85512	.66073	24.19
December	39⅛	37⅛⅛	38.346	.84058	.84274	.65013	24.59
1893.							
January	38 5/16	38⅛	38.331	.84026	.84217	.64988	24.60
February	38⅛	38⅛	38.356	.84080	.84316	.65030	24.46
March	38⅛	37 3/16	38.108	.83537	.83255	.64610	24.74
April	38 1/16	37⅛	38.028	.83361	.83610	.64495	24.79
May	38 1/16	37⅛	38.069	.83451	.83856	.64544	24.77
June	38⅛	30⅛	37.279	.81719	.81654	.63204	25.29
Average	a 40 3/16	a 30⅛	38.375	.84123	.84263	.65063	24.57

a Denotes highest and lowest for each year.

XXXIX.—*Highest, lowest, and average price of silver bullion, etc.*—Cont'd.

Fiscal years.	Highest.	Lowest.	Average London price per ounce standard, 0.925.	Equivalent value of ounce fine with exchange at par, $4.8665.	Equivalent value of ounce fine based on average price of exchange.	Bullion value of a United States silver dollar at average price of silver, exchange at par.	Commercial ratio of silver to gold.
1893.	*Pence.*	*Pence.*	*Pence.*				
July	34⅛	32⅛	33.060	$0.72471	$0.71981	$0.56052	28.52
August	34⅛	32⅛	33.944	.74409	.74337	.57550	27.78
September	34⅛	33⅛	34.120	.74799	.74709	.57854	27.63
October	34⅛	31⅛	33.608	.73672	.73839	.56723	28.05
November	32⅛	31⅛	32.240	.70673	.70390	.54444	29.25
December	32 1/16	31⅛	32.015	.70180	.70177	.54275	29.45
1894.							
January	31⅛	30⅛	33.338	.68743	.68694	.53130	30.07
February	30⅛	27⅛	29.169	.63941	.64052	.49540	32.32
March	28	27	27.286	.59814	.60037	.46434	34.56
April	29⅛	28⅛	28.802	.63138	.63382	.49022	32.74
May	29⅛	28 1/16	28.704	.62921	.63180	.48865	32.85
June	28⅛	28 1/16	28.685	.62879	.63129	.48826	32.87
Average	*a* 34⅛	*a* 27	31.247	.68136	.68117	.52726	30.50
July	28⅛	28 1/16	28.673	.62854	.63041	.48613	32.79
August	30⅛	28⅛	29.377	.64398	.64474	.49807	32.06
September	30⅛	29 3/16	29.588	.64861	.64802	.50165	31.89
October	29 5/16	28⅛	29.150	.63900	.64005	.49422	32.29
November	29 5/16	28⅛	28.977	.63520	.63628	.49128	32.48
December	28⅛	27 3/16	27.747	.60825	.61063	.47044	33.85
1895.							
January	27 7/16	27 1/16	27.331	.59914	.60190	.46339	34.34
February	27⅛	27 7/16	27.440	.60152	.60444	.46523	34.19
March	29⅛	27⅛	28.337	.62119	.62447	.48045	33.10
April	30⅛	29¼	30.415	.66674	.67059	.51568	30.82
May	30⅛	30 3/16	30.625	.67133	.67289	.51923	30.72
June	30⅛	30 3/16	30.460	.66771	.67139	.51643	30.78
Average	*a* 30⅛	*a* 27 3/16	29.010	.63593	.63798	.49183	32.40
July	30⅛	30 3/16	30.439	.66727	.67187	.51484	30.97
August	30⅛	30⅛	30.393	.66625	.67122	.51261	30.87
September	30 5/16	30 7/16	30.489	.66836	.67234	.51694	30.92
October	31⅛	30⅛	30.928	.67798	.68010	.52437	30.49
November	31	30⅛	30.789	.67493	.68592	.52201	30.62
December	30⅛	30	30.395	.66631	.66963	.51534	31.02
1896.							
January	30¼	30⅛	30.649	.67186	.67518	.51966	30.76
February	31 3/16	30⅛	30.992	.67939	.68104	.52546	30.41
March	31⅛	31¼	31.372	.68772	.68988	.53190	30.05
April	31 3/16	30⅛	31.060	.68087	.68401	.52661	30.36
May	31¼	30⅛	31.078	.68126	.68851	.52691	30.34
June	31 3/16	31 1/16	31.403	.68840	.69091	.53243	30.02
Average	*a* 31⅛	*a* 30	30.832	.67588	.68005	.52242	30.58

a Denotes highest and lowest for each year.

XXXIX.—*Highest, lowest, and average price of silver bullion, etc.*—Cont'd.

Fiscal years.	Highest.	Lowest.	Average London price per ounce standard, 0.925.	Equivalent value of ounce fine with exchange at par, $4.8665.	Equivalent value of ounce fine based on average price of exchange.	Bullion value of a United States silver dollar at average price of silver, exchange at par.	Commercial ratio of silver to gold.
1896.	*Pence.*	*Pence.*	*Pence.*				
July	31⅛	31⅛	31.4399	$0.68919	$0.69185	$0.53304	29.99
August	31⅛	30⅛	30.9593	.67866	.67879	.52490	30.45
September	30⅛	30	30.3400	.66508	.66169	.51439	31.08
October	30⅜	29⅞	30.0347	.65840	.65628	.50923	31.39
November	30	29⅞	29.9212	.65590	.65470	.50748	31.51
December	30	29⅞	29.9125	.65571	.65605	.50715	31.52
1897.							
January	29⅞	29⅛	29.7275	.65166	.65235	.50401	31.72
February	29⅞	29⅛	29.7119	.65131	.65169	.50379	31.73
March	29⅛	28⅞	28.9647	.63494	.63577	.49108	32.55
April	28⅛	28⅜	28.3726	.62195	.62323	.48034	33.28
May	28⅜	27⅛	27.7750	.60886	.61010	.47091	33.95
June	27⅞	27⅛	27.5817	.60462	.60536	.46763	34.19
Average	[a]31⅛	[a]27⅛	29.5617	.64794	.64807	.50116	31.94

[a] Denotes highest and lowest for each year.

APPENDIX E.

XXI.—Highest, lowest, and average price of bar silver in London, per ounce British standard (0.925), since 1833, and the equivalent in United States gold coin of an ounce 1,000 fine, taken at the average price.

[Report of the Director of the Mint, 1902, pages 168–170.]

Calendar years.	Highest quotation.	Lowest quotation.	Average quotation.	Value of a fine ounce at average quotation.	Calendar years.	Highest quotation.	Lowest quotation.	Average quotation.	Value of a fine ounce at average quotation.
	d.	*d.*	*d.*	*Dollars.*		*d.*	*d.*	*d.*	*Dollars.*
1833.....	59⅞	58¾	59 3/16	1.297	1868.....	61¼	60⅝	60¼	1.326
1834.....	60¾	59¾	59 11/16	1.313	1869.....	61	60	60 1/16	1.325
1835.....	60	59½	59 1/16	1.308	1870.....	60¾	60½	60 5/16	1.328
1836.....	60¾	59⅜	60	1.315	1871.....	61	60 3/16	60½	1.326
1837.....	60⅜	59	59 5/16	1.305	1872.....	61⅛	59½	60 5/16	1.322
1838.....	60½	59¼	59¼	1.304	1873.....	59 13/16	57⅞	59 3/16	1.29769
1839.....	60⅛	60	60⅛	1.323	1874.....	59¼	57½	58 5/16	1.27883
1840.....	60⅜	60⅛	60⅛	1.323	1875.....	57⅞	55¼	56 1/16	1.24233
1841.....	60⅛	59⅜	60 1/16	1.316	1876.....	58¼	46⅜	53¼	1.16414
1842.....	60	59½	59 7/16	1.303	1877.....	58½	53½	54 12/16	1.20189
1843.....	59⅛	59	59 3/16	1.297	1878.....	55½	49¼	52⅛	1.15358
1844.....	59⅜	59¼	59¼	1.304	1879.....	53⅜	48⅞	51½	1.12392
1845.....	59⅞	58⅝	59⅛	1.298	1880.....	52 13/16	51¼	52⅛	1.14507
1846.....	60⅛	59	59 5/16	1.300	1881.....	52⅞	50⅝	51⅛	1.13229
1847.....	60⅜	58⅞	59 11/16	1.308	1882.....	52⅛	50	51 3/16	1.13562
1848.....	60	58¼	59⅛	1.304	1883.....	51 7/16	50 1/16	50 5/16	1.10874
1849.....	60	59⅛	59⅜	1.309	1884.....	51⅛	45¼	50 1/16	1.11068
1850.....	61¼	59¼	61 1/16	1.316	1885.....	50	46⅞	48 5/16	1.06510
1851.....	61⅛	60	61	1.337	1886.....	47	42	45⅛	.99467
1852.....	61⅞	59⅞	60¼	1.326	1887.....	47½	43½	44 11/16	.97946
1853.....	61⅞	60⅛	61¼	1.348	1888.....	44 5/16	41⅛	42⅝	.93974
1854.....	61⅞	60⅞	61⅛	1.348	1889.....	44⅛	41 13/16	42 1/16	.93511
1855.....	61⅛	60	61 3/16	1.344	1890.....	54⅛	43⅛	47⅛	1.04634
1856.....	62¼	60¼	61 1/16	1.344	1891.....	48⅛	43¼	45 1/16	.98800
1857.....	62⅛	61	61⅛	1.353	1892.....	43⅞	37⅞	39⅞	.87145
1858.....	61⅞	60⅛	61 3/16	1.344	1893.....	38⅛	30¼	35 5/16	.78030
1859	62⅛	61⅛	62 1/16	1.360	1894.....	31⅛	27	28 1/2	.63479
1860.....	62⅛	61¼	61 11/16	1.352	1895.....	31⅛	27 3/16	29 1/2	.65406
1861.....	61⅛	60½	60 13/16	1.333	1896.....	31 1/16	29⅞	30 1/16	.67565
1862.....	62½	61	61 7/16	1.346	1897.....	29 13/16	23¼	27 3/16	.60483
1863.....	61⅞	61	61⅛	1.345	1898.....	28⅛	25	26 1/16	.59010
1864.....	62¼	60⅛	61⅛	1.345	1899.....	29	26⅛	27 1/16	.60154
1865.....	61⅛	60⅛	61 1/16	1.338	1900.....	30¼	27	28 5/16	.62007
1866.....	62⅛	60⅛	61⅛	1.339	1901.....	29 5/16	24 1/16	27 3/16	.59595
1867.....	61½	60⅛	60 5/16	1.328					

XXIV.—Commercial Ratio of Silver to Gold each Year since 1687.

[Report Director of Mint, 1902, p. 170.]

[NOTE.—From 1687 to 1832 the ratios are taken from Dr. A. Soetbeer; from 1833 to 1878 from Pixley and Abell's tables, and from 1879 to 1894 from daily cablegrams from London to the Bureau of the Mint.]

Years.	Ratio.	Years.	Ratio.	Years.	Ratio.	Years.	Ratio.	Years.	Ratio.	Years.	Ratio.
1687...	14.94	1723..	15.20	1759..	14.15	1795..	15.55	1831..	15.72	1867..	15.57
1688...	14.94	1724..	15.11	1760..	14.14	1796..	15.65	1832..	15.73	1868..	15.59
1689...	15.02	1725..	15.11	1761..	14.54	1797..	15.41	1833..	15.93	1869..	15.60
1690...	15.02	1726..	15.15	1762..	15.27	1798..	15.59	1834..	15.73	1870..	15.57
1691...	14.98	1727..	15.24	1763..	14.99	1799..	15.74	1835..	15.80	1871..	15.57
1692...	14.92	1728..	15.11	1764..	14.70	1800..	15.68	1836..	15.72	1872..	15.63
1693...	14.83	1729..	14.92	1765..	14.83	1801..	15.46	1837..	15.83	1873..	15.93
1694...	14.87	1730..	14.81	1766..	14.80	1802..	15.26	1838..	15.85	1874..	16.16
1695...	15.02	1731..	14.94	1767..	14.85	1803..	15.41	1839..	15.62	1875..	16.64
1696...	15.00	1732..	15.09	1768..	14.80	1804..	15.41	1840..	15.62	1876..	17.75
1697...	15.20	1733..	15.18	1769..	14.72	1805..	15.79	1841..	15.70	1877..	17.20
1698...	15.07	1734..	15.39	1770..	14.62	1806..	15.52	1842..	15.87	1878..	17.92
1699...	14.94	1735..	15.41	1771..	14.66	1807..	15.43	1843..	15.93	1879..	18.39
1700...	14.81	1736..	15.18	1772..	14.52	1808..	16.08	1844..	15.85	1880..	18.05
1701...	15.07	1737..	15.02	1773..	14.62	1809..	15.96	1845..	15.92	1881..	18.25
1702...	15.52	1738..	14.91	1774..	14.62	1810..	15.77	1846..	15.90	1882..	18.20
1703...	15.17	1739..	14.91	1775..	14.72	1811..	15.53	1847..	15.80	1883..	18.64
1704...	15.22	1740..	14.94	1776..	14.55	1812..	16.11	1848..	15.85	1884..	18.61
1705...	15.11	1741..	14.92	1777..	14.54	1813..	16.25	1849..	15.78	1885..	19.41
1706...	15.27	1742..	14.85	1778..	14.68	1814..	15.04	1850..	15.70	1886..	20.78
1707...	15.44	1743..	14.85	1779..	14.80	1815..	15.26	1851..	15.46	1887..	21.10
1708...	15.41	1744..	14.87	1780..	14.72	1816..	15.28	1852..	15.59	1888..	22.00
1709...	15.31	1745..	14.98	1781..	14.78	1817..	15.11	1853..	15.33	1889..	22.10
1710...	15.22	1746..	15.13	1782..	14.42	1818..	15.35	1854..	15.33	1890..	19.75
1711...	15.29	1747..	15.26	1783..	14.48	1819..	15.33	1855..	15.38	1891..	20.92
1712...	15.31	1748..	15.11	1784..	14.70	1820..	15.62	1856..	15.38	1892..	23.72
1713...	15.24	1749..	14.80	1785..	14.92	1821..	15.95	1857..	15.27	1893..	26.49
1714...	15.13	1750..	14.55	1786..	14.96	1822..	15.80	1858..	15.38	1894..	32.56
1715...	15.11	1751..	14.39	1787..	14.92	1823..	15.84	1859..	15.19	1895..	31.60
1716...	15.09	1752..	14.54	1788..	14.65	1824..	15.82	1860..	15.29	1896..	30.59
1717...	15.13	1753..	14.54	1789..	14.75	1825..	15.70	1861..	15.50	1897..	34.20
1718...	15.11	1754..	14.48	1790..	15.04	1826..	15.76	1862..	15.35	1898..	35.03
1719...	15.09	1755..	14.68	1791..	15.05	1827..	15.74	1863..	15.37	1899..	34.36
1720...	15.04	1756..	14.94	1792..	15.17	1828..	15.78	1864..	15.37	1900..	33.33
1721...	15.05	1757..	14.87	1793..	15.00	1829..	15.78	1865..	15.44	1901..	34.68
1722...	15.17	1758..	14.85	1794..	15.37	1830..	15.82	1866..	15.43		

APPENDIX F.

XL.—Changes in the values of foreign coins, 1891–1897.

[Report of the Director of the Mint, 1897, pages 205–207.]

Countries.	Monetary unit.	Value 1891.				Value 1892.	
		Jan. 1.	Apr. 1.	July 1.	Oct. 1.	Jan. 1.	Apr. 1.
Austria-Hungary	Silver florin	$0.38,1	$0.36,3	$0.36,3	$0.35,7	$0.34,1	$0.32,8
Bolivia	Silver boliviano	.77,1	.73,5	.73,6	.72,3	.69,1	.66,5
Central American States.	Silver peso	.77,1	.73,5	.73,6	.72,3	.69,1	.66,5
China	Silvertael, Shanghai	1.13,9	1.08,5	1.08,7	1.06,8	1.02,1	.98,2
Do	Silvertael, haikwan	1.27,0	1.20,9	1.21,0	1.18,9	1.13,7	1.09,3
Colombia	Silver peso	.77,1	.73,5	.73,6	.72,3	.69,1	.66,5
Cuba	Gold peso	.92,6	.92,6	.92,6	.92,6	.92,6	.92,6
Ecuador	Silver peso[a]	.77,1	.73,5	.73,3	.72,3	.69,1	.66,5
India	Silver rupee	.36,6	.34,9	.35,0	.34,3	.32,8	.31,6
Japan	Silver yen	.83,1	.79,2	.79,3	.77,9	.74,5	.71,6
Mexico	Silver dollar	.83,7	.80,0	.80,0	.78,5	.75,0	.72,2
Peru	Silver sol	.77,1	.73,5	.73,6	.72,3	.69,1	.66,5
Russia	Silver ruble	.61,7	.58,8	.58,8	.57,8	.55,3	.53,1
Tripoli	Silver mahbub	.69,5	.66,3	.66,4	.65,2	.62,3	.60,0
Venezuela	Gold bolivar	[b].15.4	[b].14,7	[b].14,7	[b].14,5	[b].13,8	[b].13,3

Countries.	Monetary unit.	Value 1892.		Value 1893.			
		July 1.	Oct. 1.	Jan. 1.	Apr. 1.	July 1.	Oct. 1.
Austria-Hungary	Silver florin	$0.32,0	[c]$0.20,3	[c]$0.20,3	[c]$0.20,3	[c]$0.20,3	[c]0.20,3
Bolivia	Silver boliviano	.64,9	.61,6	.61,3	.61,0	.60,4	.53,1
Central American States.	Silver peso	.64,9	.61,6	.61,3	.61,0	.60,4	.53,1
China	Silver tael, Shanghai	.95,8	.91,0	.90,6	.90,1	.89,2	.78,4
Do	Silver tael, haikwan	1.06,7	1.01,3	1.01,0	1.00,4	.99,4	.87,4
Colombia	Silver peso	.64,9	.61,6	.61,3	.61,0	.60,4	.53,1
Cuba	Gold peso	.92,6	.92,6	.92,6	.92,6	.92,6	.92,6
Ecuador	Silver peso[a]	.64,9	.61,6	.61,3	.61,0	.60,4	.53,1
India	Silver rupee	.30,8	.29,3	.29,2	.29,0	.28,7	.25,2
Japan	Silver yen	.69,9	.66,4	.66,1	.65,8	.65,1	.57,3
Mexico	Silver dollar	.70,4	.66,9	.66,6	.66,2	.65,6	.57,7
Peru	Silver sol	.64,9	.61,6	.61,3	.61,0	.60,4	.53,1
Russia	Silver ruble	.51,9	.49,2	.49,1	.48,8	.48,3	.42,5
Tripoli	Silver mahbub	.58,5	.55,5	.55,3	.55,0	.54,5	.47,9
Venezuela	Gold bolivar	[b].13,0	[b].12,3	.19,3	.19,3	.19,3	.19,3

[a] Since 1887 called "sucre." [b] Value of the silver bolivar. [c] Value of the gold crown.

XL.—*Changes in the values of foreign coins, 1880–1897*—Continued.

Countries.	Monetary unit.	Value 1894.			
		Jan. 1.	Apr. 1.	July 1.	Oct. 1.
Bolivia	Silver boliviano	$0.51,6	$0.46,5	$0.45,7	$0.46,4
Central American States	Silver peso	.51,6	.46,5	.45,7	.46,4
China	Silver tael, Shanghai	.76,2	.68,6	.67,6	.68,5
Do	Silver tael, haikwan	.84,9	.76,5	.75,3	.76,3
Do	Silver tael, Tientsin	.....	.....	.....	.72,7
Do	Silver tael, Chefoo	.....	.....	.....	.71,7
Colombia	Silver peso	.51,6	.46,5	.45,7	.46,4
Ecuador	Silver peso[a]	.51,6	.46,5	.45,7	.46,4
India	Silver rupee	.24,5	.22,1	.21,7	.22,0
Japan	Silver yen	.55,6	.50,1	.49,3	.50,0
Mexico	Silver dollar	.56,0	.50,5	.49,7	.50,4
Peru	Silver sol	.51,6	.46,5	.45,7	.46,4
Russia	Silver ruble	.41,3	.37,2	.36,6	.37,1
Tripoli	Silver mahbub	.46,5	.41,9	.41,3	.41,8

Countries.	Monetary unit.	Value, 1895.			
		Jan. 1.	Apr. 1.	July 1.	Oct. 1.
Bolivia	Silver boliviano	$0.45,5	$0.44,1	$0.48,6	$0.48,6
Central American States	Silver peso	.45,5	.44,1	.48,6	.48,6
China	Silver tael, Shanghai	.67,3	.65,2	.71,8	.71,8
Do	Silver tael, haikwan	.74,9	.72,6	.80,0	.80,0
Do	Silver tael, Tientsin	.71,4	.69,2	.76,1	.76,2
Do	Silver tael, Chefoo	.70,4	.68,3	.75,1	.75,2
Colombia	Silver peso	.45,5	.44,1	.48,6	.48,6
Ecuador	Silver peso[a]	.45,5	.44,1	.48,6	.48,6
India	Silver rupee	.21,6	.21,0	.23,1	.23,1
Japan	Silver yen	.49,1	.47,6	.52,4	.52,4
Mexico	Silver dollar	.49,5	.47,9	.52,8	.52,8
Persia	Silver kran	.....	.08,1	.08,9	.09,0
Peru	Silver sol	.45,5	.44,1	.48,6	.48,6
Russia	Silver ruble	.36,4	.35,3	.38,9	.38,9
Tripoli	Silver mahbub	.41,1	.39,8	.43,8	.43,8

[a] Since 1887 called "sucre."

XL.—*Changes in the values of foreign coins, 1880–1897*—Continued.

Countries.	Monetary unit.	Value, 1896.			
		Jan. 1.	Apr. 1.	July 1.	Oct. 1.
Bolivia	Silver boliviano	$0.49,1	$0.49,3	$0.49,7	$0.49,0
Central American States	Silver peso	.49,1	.49,3	.49,7	.49,0
Chile	Gold and silver peso	.91,2	.91,2	.....	.....
Do	Gold peso	.....	.....	.36,5	.36,5
China	Silver tael, Amoy	.....	.....	.80,5	.79,3
Do	Silver tael, Canton	.....	.....	.80,2	.79,0
Do	Silver tael, Chefoo	.75,9	.76,3	.76,9	.75,8
Do	Silver tael, Chin Kiang	.....	.....	.78,6	.77,4
Do	Silver tael, haikwan	.80,8	.81,2	.81,9	.80,6
Do	Silver tael, Hankow	.....	.....	.75,3	.74,2
Do	Silver tael, Hongkong	(a)	(a)	(a)	(a)
Do	Silver tael, Fuchau	.....	.....	.74,4	.73,3
Do	Silver tael, Niuchwang	.....	.....	.75,5	.74,3
Do	Silver tael, Ningpo	.....	.....	.74,4	.76,2
Do	Silver tael, Shanghai	.72,5	.72,9	.73,5	.72,4
Do	Silver tael, Swatow	.....	.....	.74,3	.73,2
Do	Silver tael, Takau	.....	.....	.81,0	.79,8
Do	Silver tael, Tientsin	.76,9	.77,3	.78,0	.76,8
Colombia	Silver peso	.49,1	.49,3	.49,7	.49,0
Ecuador	Silver sucre	.49,1	.49,3	.49,7	.49,0
India	Silver rupee	.23,3	.23,4	.23,6	.23,3
Japan	Silver yen	.52,9	.53,2	.53,6	.52,8
Mexico	Silver dollar	.53,3	.53,6	.54,0	.53,2
Persia	Silver kran	.09,0	.09,1	.09,2	.09,0
Peru	Silver sol	.49,1	.49,3	.49,7	.49,0
Russia	Silver ruble	.39,3	.39,5	.39,8	.39,2
Tripoli	Silver mahbub	.44,3	.44,5	.44,9	.44,2

a The "British dollar" has the same legal value as the Mexican dollar in Hongkong, the Straits Settlement, and Labuan.

XL.—*Changes in the values of foreign coins, 1880–1897*—Continued.

Countries.	Monetary unit.	Value 1897.			
		Jan. 1.	Apr. 1.	July 1.	Oct1 1.
Bolivia	Silver boliviano	$0.47,4	$0.46,8	$0.44,3	$0.41,2
Central American States	Silver peso	.47,4	.46,8	.44,3	.41,2
China	Silver tael, Amoy	.76,7	.75,7	.71,7	.66,6
Do	Silver tael, Canton	.76,5	.75,5	.71,5	.66,4
Do	Silver tael, Chefoo	.73,3	.72,4	.68,6	.63,7
Do	Silver tael, Chin Kiang	.74,9	.73,9	.70,0	.65,1
Do	Silver tael, Fuchau	.70,9	.70,0	.66,3	.61,6
Do	Silver tael, haikwan	.78,0	.77,0	.73,0	.67,8
Do	Silver tael, Hankow	.71,7	.70,8	.67,1	.62,3
Do	Silver tael, Hongkong	(a)	(a)	(a)	(a)
Do	Silver tael, Niuchwang	.71,9	.71,0	.67,2	.62,5
Do	Silver tael, Ningpo	.73,7	.72,8	.68,9	.64,0
Do	Silver tael, Shanghai	.70,0	.69,1	.65,5	.60,8
Do	Silver tael, Swatow	.70,8	.69,9	.66,2	.61,5
Do	Silver tael, Takau	.77,2	.76,2	.72,2	.67,0
Do	Silver tael, Tientsin	.74,3	.73,4	.69,5	.64,6
Colombia	Silver peso	.47,4	.46,8	.44,3	.41,2
Ecuador	Silver sucre	.47,4	.46,8	.44,3	.41,2
India	Silver rupee	.22,5	.22,2	.21,1	.19,6
Japan	Silver yen	.51,1	.50,5	.47,8	.....
Do	Gold yen	.....	.....	.....	.49,8
Mexico	Silver dollar	.51,5	.50,8	.48.2	.44,7
Persia	Silver kran	.08,7	.08,6	.08,2	.07,6
Peru	Silver sol	.47,4	.46,8	.44,3	.41,2
Russia	Silver ruble	.37,9	.37,4	.....	.....

a The "British dollar" has the same legal value as the Mexican dollar in Hongkong, the Straits Settlement, and Labuan.

O

In the Supreme Court of the United States.

OCTOBER TERM, 1904.

THE UNITED STATES, PETITIONER,
v.
MORRIS WHITRIDGE AND RICHARD J. WHITE, trading as Whitridge, White & Co., respondents. } No. 413.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This case arose because of the material difference between the gold value of the silver in a rupee—the current coin of India—and its commercial value.

The law requires that all imports into the United States shall be invoiced in the currency of the country from whence they came. The goods concerning which the present controversy arose were imported from India; and how the value, in American money, of the rupee of the invoice should have been determined is the question here involved. The answer depends upon the construction and application of section 25, tariff act

August 27, 1894, entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes" (28 Stat., 552), which is as follows:

> SEC. 25. That the value of foreign coin, as expressed in the money of account of the United States, shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint, and be proclaimed by the Secretary of the Treasury immediately after the passage of this act and thereafter quarterly on the first day of January, April, July, and October in each year. And the values so proclaimed shall be followed in estimating the value of all foreign merchandise exported to the United States during the quarter for which the value is proclaimed, and the date of the consular certification of any invoice shall, for the purposes of this section, be considered the date of exportation: *Provided*, That the Secretary of the Treasury may order the reliquidation of any entry at a different value whenever satisfactory evidence shall be produced to him showing that the value in United States currency of the foreign money specified in the invoice was, at the date of certification, at least ten per centum more or less than the value proclaimed during the quarter in which the consular certification occurred.

On April 1, 1900, the Director of the Mint compiled and the Secretary of the Treasury proclaimed a table showing values of current coins of the various nations,

in which the monetary standard of India was stated to be silver and the unit the rupee, worth in United States gold $0.207. There was appended to the table this footnote: "Value of the rupee to determined by consular certificate." The same note had appeared upon all similar quarterly estimates for several years. (R., 12.)

Respondents imported from India into the port of Baltimore June 18, 1900, gunny bagging. The invoice from the foreign shippers, dated April 29, 1900, was made out in rupees, and contained a certificate of our consul that the exchange value of that coin was $0.32 American money. (R., 11.)

In July, 1900, the collector of the port liquidated the entry by converting rupees into dollars at the rate of $0.32 each—to which action the importers entered protest. May 29, 1901, the collector reliquidated the entry, converting rupees at $0.207 each, and transmitted to the Secretary of the Treasury entry and invoice. June 6, 1901, the Secretary returned both to the collector with a written communication in which he advised and directed him as follows (R., 7, 12):

> In this regard I have to inform you that satisfactory evidence has been produced to the Secretary of the Treasury showing that the value in United States currency of the foreign money of the invoices—namely, the rupee of India—was 32 cents at the date of certification, which is 10 per cent more than the value proclaimed during the quarter in which the consular certification occurred.
>
> In view of the facts stated, you are hereby directed to reliquidate the entries hereinbefore

> mentioned on the basis of this latter value under the authority conferred upon the Secretary of the Treasury by the proviso to section 25 of the act of August 28, 1894

The collector, June 12, 1901, again reliquidated the entry, estimating rupees at $0.32 each.

(The Secretary of the Treasury has the right to order a reliquidation at any time within twelve months after the original entry.)

June 18, 1901, the importers, in a writing addressed to him, protested against the last action of the collector, assigning therefor the following reasons (R., 5):

> You have, by liquidation or reliquidation, assessed duty on the basis, in United States money, of an assumed value of the invoice coin or currency greater than its actual value or proclaimed value, and greater than that permitted or authorized by law. Duty should be assessed on the basis of the value of said coin or currency estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury on the first day of the quarter year during which the goods were exported to the United States. The Secretary of the Treasury has not ordered the liquidation or reliquidation of said entries at a different value from that which is herein claimed, or, if so, such order is illegal, void, and of no effect. No evidence, or no satisfactory evidence, was produced to said Secretary to bring these cases within the proviso of section 25, tariff act of August 27, 1894, and they are not within it. The body of said section should govern your action in this matter.

This protest challenged the reliquidation solely for alleged wrongful valuation of the foreign money.

The protest was submitted to the Board of General Appraisers, and before it the importers undertook to prove, by a witness and statistics, over the objection of the Government, that the gold value of the silver in an Indian rupee on the 19th of April, 1900, when the invoice was consulated, was $0.2045015, and not 10 per cent more or less than the value proclaimed by the Secretary of the Treasury on the first day of the quarter year. (R., 8, 9, 10.)

No direct attempt was made to show what evidence was considered or acted on by the Secretary before he directed reliquidation.

The Board of General Appraisers sustained the protest and ordered the collector to liquidate the entry according to the metallic value of the rupee as proclaimed April 1, 1900—$0.207 (R., 11); in other words, to admit the merchandise at a valuation of less than two-thirds of its actual cost.

The circuit court affirmed the judgment of the Board without opinion, and upon appeal the circuit court of appeals sustained that action for the reasons specified in its opinion found in the record at page 19.

The Government has admitted nothing as to the value of the silver in a rupee in April, 1900, nor has it admitted anything concerning the reasons or grounds for the action of the Secretary of the Treasury in ordering a reliquidation at a different valuation of the

rupee from the one proclaimed—except what appears above in his direction to the collector—or how he determined the valuation fixed by him. It denied the importers' right to show by proof anything in reference to those matters, and the evidence supposed to relate thereto was admitted over its objection.

The exchange value of the rupee ($0.32) determined, of course, the cost of the goods to the American importers, and if the entry was properly liquidated at that rate duties were imposed according to the cost price. If, however, the coin must be estimated at the value proclaimed April 1, 1900—$0.207—duties will be imposed upon a valuation less than two-thirds of actual cost.

The importers maintain:

The Secretary of the Treasury had no power to order reliquidation of the entry at a valuation of the rupee different from its metal value as proclaimed by him on April 1, 1900, unless, as a matter of fact—which was open to inquiry and proof—the value of the silver therein, upon the date of the certification of the invoice, was 10 per cent more or less than the one so proclaimed; and that the proof affirmatively shows no such change had occurred.

The Government maintains:

1. The action of the Secretary of the Treasury in declaring the value of the rupee of the invoice when he ordered reliquidation of the entry in June, 1901,

was final and conclusive, and could not be reviewed or the facts upon which the same was based inquired into by appraisers or courts.

2. Since September 15, 1899, the monetary standard of India has been gold, the standard coin the British sovereign (worth $4.8665), and the rupee a token coin current as the one-fifteenth part thereof—$0.324+. The Secretary of the Treasury, therefore, committed no error of which respondents can complain when he reliquidated the entry in question, valuing the rupee at $0.32.

3. The proviso in section 25, act of 1894, gave the Secretary of the Treasury the right to direct reliquidation of an entry at the exchange value of the money specified in the invoice whenever that was 10 per cent more or less than the metallic value proclaimed at the beginning of the quarter, and such right did not depend on a change in the market value of the metal in the coin.

STATUTES, ETC.

The tariff administrative act, July 31, 1789, c. 5 (1 Stat., 29), provided:

> SEC. 18. That all foreign coins and currency shall be estimated according to the following rates: Each pound sterling of Great Britain, at four dollars forty-four cents. * * * Each rupee of Bengal at fifty-five cents and a half, and all other denominations of money in value as near as may be to the said rates; and the invoices of all importations shall be made out in the currency of the place or country from whence the importation shall be made, and not otherwise.

Values were prescribed for certain foreign coins by similar statutes prior to 1873. (Act August 4, 1790, sec. 40, 1 Stat., 167; act March 2, 1799, sec. 61, 1 Stat., 673; act March 3, 1801, 2 Stat., 121; act June 28, 1834, 4 Stat., 700; act July 27, 1842, 5 Stat., 496; act March 3, 1843, 5 Stat., 625; act May 22, 1846, 9 Stat., 14.)

In 1873 Congress, departing from former practice, required annual valuation of foreign coins by the Director of the Mint and proclamation of the same by the Secretary of the Treasury. Act March 3, 1873, c. 268 (17 Stat., 602; R. S., 3564), provided:

> SEC. 1. That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the Director of the Mint, and be proclaimed on the first day of January by the Secretary of the Treasury.

The tariff act of October 1, 1890 (26 Stat., c. 1244, pp. 567, 624), modified the act of 1873 by requiring a quarterly estimate and proclamation. It provided:

> SEC. 52. That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint, and be proclaimed by the Secretary of the Treasury

immediately after the passage of this act and thereafter quarterly on the first day of January, April, July, and October in each year.

"An act to reduce taxation, to provide revenue for the Government, and for other purposes," August 27, 1894 (28 Stat., c. 349, pp. 509, 552) provides:

SEC. 25. [This section is set out in full, p. 2 ante. It was not repealed by the tariff act of 1897, is now in full force and constitutes the present law providing how foreign coins and money shall be estimated.]

The statute and regulations in reference to depreciated currency are set out in Appendix K, p. 69, hereof.

The policy of Congress as to *ad valorem* duties, shown in the first customs administrative act and all others, is to assess them on imports substantially at their *actual cost or market value*, and to effect this invoices in currency of the exporting country are required. (Act July 31, 1789, c. 5, secs. 17, 18, 1 Stat., 41; act August 4, 1790, c. 35, secs. 39, 40, 1 Stat., 167; act March 2, 1799, c. 22, sec. 61, 1 Stat., 673; act March 3, 1801, c. 28, sec. 2, 2 Stat., 121; section 2903, R. S.)

The purpose to arrive at actual cost or value is accentuated by the strict provisions of the customs administrative act of June 10, 1890 (26 Stat., c. 407, p. 131), in which it is provided:

SEC. 2. That all *invoices* of imported merchandise shall be made out in the currency of the place or country from whence the importa-

tions shall be made, or, if purchased, in the *currency actually paid therefor*, shall contain a correct description of such merchandise. * * *

SEC. 10. That it shall be the duty of the appraisers of the United States, and every of them, and every person who shall act as such appraiser, or of the collector, as the case may be, by all reasonable ways and means in his or their power, to ascertain, estimate, and appraise (any invoice or affidavit thereto or statement of cost, or of cost of production to the contrary notwithstanding) the actual market value and wholesale price of the merchandise at the time of exportation to the United States in the principal markets of the country whence the same has been imported, and the number of yards, parcels, or quantities, and actual market value or wholesale price of every of them, as the case may require.

(See also sections 3, 4, 5, 7, 11, etc.)

Reliquidation of any entry may be made within a year after the original entry.

Section 21, act June 22, 1874 (18 Stat., C. 391, p. 190, Comp. Stat., p. 1986), and section 24, act June 10, 1890 (26 Stat., 140, Comp. Stat., p. 1987); Beard *v.* Porter, 124 U. S., 437–441; Neresheimer *v.* U. S., 131 Fed. Rep., 977.

Section 2652, Revised Statutes, provides:

> It shall be the duty of all officers of the customs to execute and carry into effect all instructions of the Secretary of the Treasury relative to the execution of the revenue laws;

> and in case any difficulty shall arise as to the true construction or meaning of any part of the revenue laws, the decision of the Secretary of the Treasury shall be conclusive and binding upon all officers of the customs.

A collector is merely a subordinate to the Secretary of the Treasury. (21 Opinions Atty. Genl., 203; R. S., §249; U. S. *v.* Ballin, 144 U. S., 1–10.)

By Act VIII of 1893, Indian Government, the mints were closed from June 26 of that year to free coinage; but the Government remained empowered to coin rupees from silver presented by itself. (Report Director of the Mint, 1893, p. 235; id., 1900, p. 383: Appendix I hereto, p. 67.)

Act XXII, Indian Government, passed September 15, 1899, made the monetary standard of India gold and the unit the sovereign which then became legal tender at the rate of 15 rupees. (Report, Director of the Mint, 1900, p. 381; Appendix J hereto, p. 68.)

The following from the treaty with Japan (1894) illustrates our obligations to other nations:

> ARTICLE IV. No other or higher duties shall be imposed on the importation into the territories of the United States of any article, the produce or manufacture of the territories of His Majesty the Emperor of Japan * * * than on the like article produced or manufactured in any other foreign country. * * *

FACTS RELATING TO THE COINAGE AND DECLINE OF SILVER.

To understand the purpose of Congress in enacting the proviso in section 25, act of 1894—an act to raise revenue—consideration must be given to conditions then existing and to certain facts relating to silver and coinage.

For more than a hundred years prior to 1873—except in 1808, 1812, and 1813—the average market value of 16 ounces of silver was in excess of 1 ounce of gold and an ounce of pure silver was worth more than $1.29. Variations in average yearly prices were very small. (Appendix E.)

A decline in the market value of silver began in the last of 1873 and, with some temporary changes, continued until in July, 1876, an ounce of fine silver was worth $1.0768. The price then increased, until in January, 1877, it was $1.26. Thereafter, with some fluctuations year after year, there was a gradual fall until in June, 1889, the average price per ounce was $0.921, and the bullion value of the silver dollar $0.712. From the latter date until April, 1890, the value gradually increased, the average for March, 1890, being $0.962. Congress was then in session and was expected to enact legislation favorable to silver. It did pass what is known as the Sherman Act July 14, 1890.

Commencing in the last of April, 1890, the price of silver began rapidly to appreciate, and in September, 1890, the average per ounce was $1.164—a rise of more than 20 per cent in less than six months. Imme-

diately after this rise the act of October 1, 1890, requiring quarterly estimates by the Bureau of the Mint, was passed.

The Secretary of the Treasury, January 1, 1890, proclaimed, as directed by the act of 1873, the value of the rupee to be $0.332. Under the act of 1890 he proclaimed its value, as of October 1, to be $0.404. After October, 1890, silver rapidly declined, the average price per ounce for June, 1893, being $0.817, and for July, 1894, $0.628. (Appendixes D and F.)

On June 24, 1893, when rumors became current that the Indian mints were to be closed, the quotation for silver per ounce in London was 37½d, in New York $0.82. On June 26, when it was definitely announced that they had been closed, silver in London was at 36d, equal to $0.784 per ounce fine, and in New York $0.78. The rapid decline continued until on June 30 the London price was 30½d, equal to $0.664 per ounce fine, and the New York price $0.67 to $0.65. (Report, Director of the Mint, 1893, p. 18; 1894, pp. 205–206.)

Only twice in history has the market value of silver changed so much as 10 per cent in any quarter year—once in 1890 and once in 1893.

Conspicuous among the well-known causes which contributed to the great depreciation of silver was the closing of the Indian mints, to which something like one-fourth of the world's annual production had gone.

Prior to June 26, 1893, those mints were open to the free, unlimited coinage of the silver rupee, the standard coin of the country, and its value declined,

following silver, from $0.48, in 1873, to $0.29, April 1, 1893. The exchange value, coinage being free, followed, of course, the fluctuations in the value of the bullion, the slight difference between the two being controlled by such facts as ordinarily determine the price of foreign exchange.

In October, 1892, the British Government appointed a currency committee (Lord Herschell's) and charged it with the duty of making a report concerning the coinage of India. After thorough examination of currency systems, May 31, 1893, this committee made an exhaustive report wherein, after expressing the opinion that so to do would result in further depreciating the market price of silver but would steady the exchange value of the rupee and cause the same thereafter to materially advance, it recommended that the Indian mints be closed as a first step toward establishing the gold standard in that country. Without previous notice this was done June 26, 1893. (See act No. VIII, Appendix I hereto, p. 67.) The *immediate* result was an appreciation in the exchange value of the rupee and a radical depreciation in the market value of the silver therein. And such values have been wide apart from that day to this.

On June 21, 1893, the bullion value of the rupee was $0.287, its exchange value $0.303; on June 30 the former was $0.228 and the latter $0.322. In ten days the metallic value declined more than 18 per cent, while the exchange value advanced nearly 5 per cent. From July 1, 1893, until October 1, 1894, the

average exchange value of the rupee was *more than 20 per cent* in excess of its metallic value. (Appendices A and B.)

July 1, 1894, the Secretary of the Treasury proclaimed the metallic value of the rupee as $0.217; on the same day its exchange value was $0.261. The tariff act of 1894 was passed on August 27.

The report of Lord Herschell's Currency Committee attracted wide attention and was regarded as so important that 6,000 copies of it, together with the evidence—a volume of more than 800 pages—were printed by direction of Congress contained in resolution dated August 18, 1893. It was much read and commented upon. It distinctly pointed out that while closing the Indian mints would probably result in further depreciating silver, nevertheless the exchange value of the rupee would thereby be increased and would gradually advance to 1s. 4d. ($0.32). The result proved in harmony with the committee's anticipation and was watched with great interest throughout this country.

The express purpose of closing the Indian mints was to divorce the metallic and exchange values of the rupee, to steady and then advance the latter while the former declined. And this was undertaken as a preliminary step to the ultimate establishment of a fixed gold standard.

As appendices (A and B) hereto are printed tables from the Report of the Director of the Mint, which confirm the foregoing statements. (Report Director of the Mint, 1904, pp. 205, 206, 207.) Reference is also

made to the report of Lord Herschell's Currency Committee, printed by resolution of Congress and the report of the Currency Committee of 1898, dated July 7, 1899, and printed in Sessional Papers, House of Commons, volume 31, 1899.

In January, 1898, the exchange value of the rupee, after having been for some years below that figure, reached 1s. 4d. ($0.32), where it has since remained. The value of the silver in a rupee at that time was $0.20.

By an act of the Indian government, passed September 15, 1899—the outcome of the report made July 7, 1899, by the Indian Currency Committee, appointed April 29, 1898—gold became and since then has been the money standard of that country. It made gold legal tender at the rate of 15 rupees to 1 sovereign, and left the rupee likewise legal tender to an unlimited amount, thus placing the silver coin of India in relation to gold in a condition similar to that existing in France and the United States, and establishing a practical gold standard and a gold currency. (Report Director of the Mint, 1900, p. 154 et seq.)

Silver rupees since September, 1899, have been in fact only token coins like the silver dollars of the United States, or, in the language of the Financial Statement of India for 1900–1901, "our notes printed on silver, as we may really regard our rupees."—(Session Papers, House of Commons, 1900, vol. 57.)

HISTORY OF THE PROVISO IN SECTION 25, ACT OF 1894.

The facts ascertainable from Congressional Records are meager. The bill when first before the Senate provided:

> SEC. 52. That the value of foreign coin as expressed in the money of account of the United States shall be of that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint and be proclaimed by the Secretary of the Treasury immediately after the passage of this act, and thereafter quarterly on the first day of January, April, July, and October in each year.

This was the language of section 52, tariff act, October 1, 1890, which modified act March 3, 1873.

On June 20, 1894, the committee recommended section 52 be amended by adding the following:

> And the values so proclaimed shall be followed in estimating the value of all foreign merchandise exported to the United States during the quarter for which the value is proclaimed, and the date of the consular certification of any invoice shall, for the purposes of this section, be considered the date of exportation: *Provided*, That the Secretary of the Treasury may order the reliquidation of any entry at a different value whenever satisfactory evidence shall be produced to him showing that the value in United States currency of the foreign money specified in the invoice was at the date of certification at least ten per cent, more or less, than

the value proclaimed during the quarter in which the consular certification occurred.

The amendment was agreed to without debate, and in the final arrangement section 52 as amended became section 25. (Congressional Record, vol. 26, Fifty-third Congress, second session, p. 6576.)

That part of the amendment which preceded the word "provided" was not new legislation. It in substance expressed the effect of the acts of 1873 and 1890, as expounded in *Collector* v. *Richards* (23 Wall., 246, 259, 261); *Cramer* v. *Arthur* (102 U. S., 612); *Hadden* v. *Merritt* (115 U. S., 25); *United States* v. *Klingenberg* (153 U. S., 93).

The proviso contained in the amendment was new legislation.

HISTORY OF LITIGATION TOUCHING THE VALUE OF THE RUPEE.

United States v. *Newhall* (91 F. R., 525), United States circuit court, Massachusetts, January 7, 1899, opinion by Colt, circuit judge.

In this case *no reliquidation* was ordered by the Treasury. The *collector* liquidated the entry in the first instance at the exchange value of the rupee instead of the proclaimed one, assuming it was depreciated currency. Judge Colt held the proviso in section 25, act of 1894, did not permit the *collector* to adopt the exchange value; and he further said (unnecessarily) that it did not authorize valuation of foreign coins according to exchange values by anyone, but that they

should be estimated only according to price of the metal contained.

This case was not further prosecuted. Possibly a correct result was reached on the facts presented, because an estimate not based on the proclaimed value of the rupee was first made by the *collector*, and not by the Secretary when directing reliquidation. It was unnecessary to pass on other questions.

United States v. *Beebe*, U. S. circuit court, Massachusetts, August 27, 1900. (103 Fed. Rep., 785.)

In this case also the *collector* liquidated the entry in the *first* instance at the exchange value of the rupee, and no reliquidation was directed by the Secretary. Colt, judge, said: "This petition for review is governed by the principles laid down in *United States* v. *Newhall*." (106 Fed. Rep., 75.)

An appeal was taken to the circuit court of appeals, first circuit, which declined to construe generally section 25, act of 1894, but held the collector erred by failing in the first liquidation to follow the proclaimed metallic value. The circuit court was for that reason sustained, but it was expressly adjudged without prejudice to either party to proceed further, after reliquidation, under direction of the Secretary.

A petition for certiorari was presented to this court at the October term, 1900, and denied March 11, 1901 (180 U. S., 640). There was reason for such denial without consideration of the questions now involved. The judgment below was *not final* and *no reliquidation* had been ordered.

After the action of this court the collector reliquidated the entry at the proclaimed value of the rupee, and the Secretary informed him that upon satisfactory evidence he had found a different value and directed another reliquidation. The case was thereafter tried on an *agreed statement*, which contained a stipulation that the order for reliquidation by the Secretary was *not based* upon any *difference between the pure metal value of the rupee* on date of invoice and that proclaimed at the beginning of the quarter, and, further, that the *value fixed* by the Secretary was *not intended* to be the pure metal value on date of certification, the metallic value being then substantially the same as the one proclaimed. No such stipulation is in the present record, and it does not appear affirmatively *why* the Secretary adopted the value specified by him.

On the second trial of *United States* v. *Beebe*, September 4, 1902 (117 F. R., 670), the circuit court adhered to its opinion (unnecessarily expressed) in the *Newhall* case, that the Secretary should have been governed only by the metallic value of the coin. The court also said (correctly) that in the case then pending *it was expressly stipulated* the Secretary *did not* base his action upon any difference in metallic values, and that the pure-metal value of the rupee on date of invoice was substantially the same as the one proclaimed. It *accordingly* held that no *question of fact* upon which the Secretary had passed was involved, but only questions of law. Basing such action upon the *stipulation*, the contention of the Government as to the finality of the Secretary's action was overruled.

The circuit court of appeals affirmed the judgment of the circuit court. (*United States* v. *Beebe*, 122 F. R., 762, March 10, 1903. Opinion by Putnam, J.)

Its conclusion seems to have resulted from an entire misapprehension of conditions existing when the act of 1894 was passed. They are stated in *important* particulars as being exactly the reverse of what they really were:

Discussing the proviso, the court said (p. 764):

> Previous to June, 1893, the mints of India had been bound by law to the free public coinage of silver into rupees, and therefore the rupee circulated at its bullion value. * * *
>
> Thus it will be seen that the silver rupee, like our silver dollar, had, at the time this merchandise was invoiced, a practical value as legal tender far in excess of the bullion value at which, according to law, it was rated by the Director of the Mint; and these changes in value accrued after the act of 1894 went into effect. Previous to that act there were no differences with regard to the rupee of the character which we have described as existing in 1898. The prior differences were such as arose from the fluctuations of the marketable price of silver. * * * [The facts set out above show statements in this paragraph to be erroneous.]
>
> (P. 768.) The reason for this proviso can be suggested only by the fact of the numerous violent fluctuations in the market value of silver and in the corresponding market value of rupees, which we have fully explained, and this brings us under the leadership of the safest guide for

> the construction of a statute—already referred to—that is, the consideration of the causes which moved the legislature. The circumstance that the legal-tender value of the rupee far exceeded its bullion value, which is now presented, did not exist when the act of 1894 was passed, and it could not have been in the contemplation of Congress. In fact, it may be said never to have previously existed so far as known to our customs system. [It had existed for more than a year, and was notorious.]

In view of the effect given the stipulation in the *Beebe* litigation, it seemed proper to submit the present case in which the Government could finally present to this court its exact contentions on all points. In this the collector liquidated the entry at the proclaimed value of the rupee. The Secretary thereafter notified the collector that *satisfactory evidence having been produced to him* showing the value in United States currency of the foreign money in the invoice—the rupee of India—was $0.32 at the date of the certification, which was 10 per cent more than the value proclaimed for the quarter in which the consular certification occurred, and directed reliquidation of the entry at $0.32 per rupee, under authority of section 25, act 1894. The circuit court decided against the Government, and its judgment was affirmed by the circuit court of appeals March 14, 1904, in an opinion written by Boyd, district judge (129 F. R., 33). That opinion follows the cases in the courts in Massachusetts above referred to without adding anything of importance.

ARGUMENT.

I.

The action of the Secretary of the Treasury in declaring the value of the rupee of the invoice, when he ordered reliquidation of the entry, in June, 1901, was final and conclusive, and could not be reviewed or the facts upon which the same was based inquired into by appraisers or courts.

Section 25 has two important parts: First, the provisions for valuing foreign coins taken from the act of 1873 requiring an annual estimate, as modified by the act of 1890 requiring quarterly estimates; and, second, the proviso relating to reliquidation, which was entirely new legislation.

The action of the Secretary, taken in pursuance of the power given by either part of the section, should have the same ultimate effect. His action under the provisions adopted from prior legislation was purposely made conclusive, and no reason appears why the same finality was not intended to result when he proceeded under the new provision incorporated in the same section and relating to the same subject.

This court, in cases decided prior to 1894, settled the conclusiveness of the Secretary's valuations of foreign coins under the acts of 1873 and 1890.

Collector v. *Richards*, **23** Wall., 246.
Cramer v. *Arthur*, **102** U. S., **612**.
Hadden v. *Merritt*, 115 U. S., 25.
United States v. *Klingenberg*, 153 U. S., 93.

In *Hadden* v. *Merritt* (May 4, 1885) the invoice was in Mexican dollars, the value of which had been im-

properly estimated. The importer offered to prove that such dollars, instead of being worth $1.01 as proclaimed, at date of the proclamation were worth only $0.87; that such valuation had been reached by wrongfully comparing the Mexican silver dollar with the American silver dollar, instead of basing the estimate on the gold dollar; and that duties were being charged upon his goods at a valuation much in excess of cost. The evidence was rejected. This court, speaking by Mr. Justice Matthews, said (p. 27):

> The value of foreign coins, as ascertained by the estimate of the Director of the Mint and proclaimed by the Secretary of the Treasury, is conclusive upon custom-house officers and importers. No errors alleged to exist in the estimate, resulting from any cause, can be shown in a judicial proceeding to affect the rights of the Government or individuals. There is no value, and can be none, in such coins except as thus ascertained; and the duty of ascertaining and declaring their value, cast upon the Treasury Department, is the performance of an executive function, requiring skill and the exercise of judgment and discretion, which precludes judicial inquiry into the correctness of the decision. If any error, in adopting a wrong standard, rule, or mode of computation, or in any other way, is alleged to have been committed, there is but one method of correction. That is to appeal to the Department itself. * * * The whole subject is confided by the law exclusively to the jurisdiction of the executive officers charged with the

duty, and their action can not be otherwise questioned.

United States v. *Klingenberg* (April, 1894).

The goods were from Austria, the invoice in paper florins, worth in American money $0.32. They were converted by the collector at $0.482, according to the proclaimed valuation of the gold florin. This resulted in charging duties on the goods at a valuation greatly exceeding their cost. The importer protested and unsuccessfully claimed he was entitled to show the facts and have the entry reliquidated. Speaking of those provisions which required invoices in currency of the exporting country, and the Director of the Mint to ascertain the value of foreign coins, this court, Mr. Justice Jackson delivering the opinion, said (p. 99):

> These provisions being substantially reenactments of former laws, must, upon well-settled principles, be interpreted in the light of the decisions already referred to, and the estimate of the Director of the Mint, as proclaimed by the Secretary of the Treasury, fixing the values of foreign coin or currency in terms of the money of account of the United States, must be held equally conclusive both upon the Government and the importer as under the former statutes.

The above cited cases establish the conclusiveness of the Secretary's action in proclaiming values of foreign coins when proceeding under the first part of section 25, act of 1894. The Government contends that when he acted in this case under the second part

of the same—the proviso—his action was likewise conclusive. He passed on facts, not law.

See also *Muser* v. *Magone*, 155 U. S., 240, 251, and *United States* v. *Passavant*, 169 U. S., 16.

In *Muser* v. *Magone*, the importers sought to show that the general appraiser arrived at the valuation of the goods by a wrong process. The court, speaking by Mr. Chief Justice Fuller, said (p. 251):

> The course of business at St. Gall in respect of these embroideries was peculiar, and to reach a result, in estimating the value, required the consideration of many elements making up the amount which actually represented the pecuniary basis of transactions. How these various elements impressed the general appraiser, and what grounds influenced or controlled his mental processes, were matters in respect of which he could not be interrogated, since his decision, when approved by the collector, was final, and could not be reviewed and the verdict of a jury substituted. The proper evidence of the decision of the appraisers and of the collector was to be found in their official returns, and if they acted without fraud and within the powers conferred on them by statute, their decision could not be impeached by requiring them to disclose the reasons which impelled their conclusions or by proving remarks they may have made in the premises.

No affirmative evidence shows in the present case that the Secretary's instruction to the collector to reliquidate the entry by valuing the rupee at 80.32 was

not based on that coin's metallic value. No affirmative proof in the record and no agreement shows the ground upon which the Secretary acted or why he fixed the specified value, and the Government objected to the introduction of evidence on that subject. The importer undertook to prove that between the beginning of the quarter and date of consular certificate the rupee's metallic value had not varied as much as 10 per cent; but what evidence was before the Secretary, or upon what he based his valuation, the record does not undertake to show. There was a *stipulation* covering this in the *Beebe* case.

Objection may be made to giving the Secretary power to order, with conclusive effect, reliquidation at a different valuation of foreign money from the one proclaimed. Objections were strenuously urged against his power to conclusively determine and proclaim valuations under the old law, but this court upheld it, notwithstanding, as in the cases of *Hadden* v. *Merritt* and *United States* v. *Klingenberg*, the importer was required to pay excessive charges. The Government now only seeks to impose duties upon actual values, in harmony with the well-defined purpose of all customs legislation.

II.

Since September 15, 1899, the monetary standard of India has been gold, the standard coin the British sovereign (worth $4.8665) and the rupee, a token coin, current as the one-fifteenth part thereof—$0.324+. The Secretary of the Treasury, therefore, committed no error of which the importers can complain when he reliquidated the entry in question, valuing the rupee at $0.32.

The Secretary of the Treasury has the unquestioned right to order reliquidation of the entry of any imported merchandise within a year after its arrival. This enables him to correct mistakes and do justice to all concerned; and for such purposes the power is constantly exercised. This use of it was referred to and sanctioned in *Hadden* v. *Merritt* (*supra*), wherein this court said: "If any error in adopting a wrong standard or mode of computation, or in any other way, is alleged to have been committed, there is but one method of correction. That is to appeal to the Department itself."

If, as the law stood prior to 1894, the Secretary had proclaimed a wrong valuation of a foreign coin and an entry had been liquidated according thereto, upon discovering the mistake he would have had the right to correct it within a year by ordering a reliquidation. He could have done this in favor of either the Government or the importer. The proviso in section 25, act 1894, clearly was not intended to take away from the Secretary any power then possessed. It follows that if in the present case a mistake was made in the proclaimed estimate of the rupee he had power to correct it without reference to the provisions of the proviso.

At all times since September 15, 1899, the money of India has been on a gold basis, its standard coin has been the English sovereign, and the rupee has been, in fact, a mere token coin, current as the one-fifteenth part of a sovereign. Rupees since that date have not in any proper sense been such "standard

coins in circulation" as to be within the language or meaning of section 25.

The above facts were fully disclosed to the Secretary of the Treasury in the report for 1900 addressed to him on December 18, in that year, by the Director of the Mint. They were used in making up the quarterly proclamation of values of foreign coins issued October 1, 1900, which for India specified the standard as gold and the monetary unit as the rupee worth $0.324, with this note: "The sovereign is the standard coin of India, but the rupee is the money of account current at fifteen to the sovereign." All similar quarterly proclamations since that one have been in accordance with it, and importers have acquiesced and duties have been paid upon estimates following the valuation of the rupee therein given. No material change in the money of India took place between September 15, 1899, and October 1, 1900.

The Secretary erred when he proclaimed on April 1, 1900, that India was on a silver standard with the rupee as the monetary unit worth in American money $0.207. He should then have stated the standard was gold, that the sovereign was the standard coin, and that the rupee was a mere token circulating at a valuation of one-fifteenth part of a sovereign—$0.32+. Satisfactory evidence of the foregoing facts was certainly presented to him as early as December 18, 1900, the date of the report of the Director of the Mint—more than six months before he directed the reliquidation now complained of.

The proviso in section 25, empowers the Secretary to order a reliquidation whenever satisfactory evidence shall be produced to him showing the value of the foreign money of the invoice *was* at date of certification 10 per cent more or less than the one proclaimed at the beginning of the quarter. This power continues during a whole year, and is broad enough to apply to those cases where money values have been affected by a change of standards, and certainly to instances when a token coin has been mistaken for a standard one.

When the reliquidation (within a year) was ordered in the present case the Secretary, from overwhelming evidence, knew what the money conditions in India were at the time the goods in question were exported and he knew the error contained in the proclamation of April 1, 1900. The Government respectfully insists that, possessing such information, it was his right and duty under the provisions of the old law and also under those in the proviso in section 25, act 1894, to direct a reliquidation, valuing the rupee as one-fifteenth part of a sovereign. Certainly importers can not complain because he placed its value at a slightly lower figure than the one he might—perhaps, should—have fixed.

Respondents undertook to show by proof that the market value of the silver in a rupee during the year 1900 was not greater or less by 10 per cent than it was proclaimed to be on April 1, 1900, and maintain that, therefore, the Secretary committed error which the court should correct when he ordered reliquidation,

valuing the rupee at $0.32. But as the monetary standard of India during 1900 was gold and the rupee a mere token coin, the value of which did not depend upon its silver contents, and as the Secretary of the Treasury had a clear right within a year to order reliquidation estimating the rupee according to the true standard, silver values can have nothing to do with the case.

The Director of the Mint, in his report for 1900, said (p. 154):

> The outgoing fiscal year has witnessed the end of the unsettled state of Indian currency, which had in 1893 led to the closure of the Indian mints to the receipt of silver for coinage from the public and had since engaged the solicitude of the government. By the act passed on September 15 of last year (act XXII, 1899), as the outcome of the Indian currency committee's report, gold has become legal tender in India. To quote the language of Mr. J. F. Finlay, secretary to the government of India, in its financial statement for 1900–1901:
>
> "India has at length emerged from a period of transition in her currency; has reached the goal to which she has been struggling for years; has established a gold standard and a gold currency, and has attained that practical fixity in exchange which has brought a relief alike to the private individual and to the government finances."

The above is followed by a review of the monetary history of India.

The director-general of statistics for India in a letter to the Director of the United States Mint, dated July 13, 1900, inclosed a summary of the Indian monetary system then in effect (see Report Director of the Mint, 1900, p. 383), in which it was said:

> By Act VIII of 1893 the Indian mints were closed from June 26 of that year to the receipt of silver for coinage from the public; but the government remained empowered to coin rupees and fractions thereof from silver presented by itself at the mints; and this power has been used since the closure of the mints for some years for the coinage of subsidiary silver coins, and, in 1899 and 1900, for the coinage of rupees and half rupees, in order to replace the depleted silver currency. * * *
>
> That system (the Indian monetary system) has been settled as follows by Act VIII of 1893, Act XXII of 1899, passed on September 15, 1899, and the subsidiary notifications and orders issued under these acts:
>
> The monetary standard is gold, and the unit is the sovereign, coined in the royal mint in London, or in any branch of the royal mint established in the colonies or in India. The sovereign is legal tender at the rate of 15 rupees, as long as it has not lost weight beyond the limit of legal remedy or been called in.

In a communication dated Calcutta, May 31, 1900, the statistics department for India (Report Director of the Mint, 1900, p. 378), said:

> Act No. XXII of 1899, passed by the governor-general in council, gave legislative effect to the decision of the government to change the standard of the Indian monetary system from silver to gold. By that act sovereigns coined at the royal mint in England, or in any mint established under proclamation by Her Majesty, were declared to be legal tender at the rate of 15 rupees to the sovereign.

A copy of Act No. XXII, appears to have been inclosed in the communication and is set out at page 381, Report Director of the Mint for 1900. (Appendix J., hereto, p. 62.)

III.

The proviso in section 25, act of 1894, gave the Secretary of the Treasury the right to direct reliquidation of an entry at the exchange value of the money specified in the invoice whenever that was 10 per cent more or less than the metallic value proclaimed at the beginning of the quarter, and such right did not depend on a change in the market value of the metal in the coin.

The word "value," in section 25, as therein used, has radically different significations.

The value of *standard* foreign *coin* is the thing referred to in the first part of the section, whereas in the proviso it is value of "the foreign *money* specified in

the invoice." The value of such *coin* must be primarily determined by the Director of the Mint, an expert as to metallic values. The proviso, which in this instance carves nothing out of what had theretofore been expressed, gives an entirely new power—delegated to no one by the preceding part of the section—to the Secretary of the Treasury and imposes upon him alone the duty of ascertaining the value of "the foreign money." No specific words oblige him to base estimates upon the market price of any metal, but such words do restrict the Director of the Mint.

The first part of section 25 (the old law) provides, in effect, that the value (relative worth) of a standard foreign *coin* (not a token coin), as expressed in the money of account of the United States, shall be that (the value—the market value) of the metal contained therein; and that such value (market value of metal in the coin) shall be determined quarterly by the Mint, be proclaimed by the Secretary, and be followed in estimating the value (that is, the invoice, cost, or market price) of imported goods.

The proviso, I submit, provides, in effect, that the Secretary may order reliquidation of any entry at a different value (that is, invoice, cost, or market price of goods) on satisfactory evidence showing the value in United States currency (that is, the market value) of the *foreign money* specified in the invoice (which may include token coins) was 10 per cent, more or less, than the value (that is, market value of the metal) proclaimed.

The first of the section requires the value of foreign *coins* to be determined by market price of the metal therein; under the proviso the value of the foreign *money*—not coin—specified in the invoice should likewise be determined by its market price.

The act is sufficiently doubtful to require construction.

The new legislation in the proviso must be read in the light of former laws and facts known at the time of enactment, detailed *ante*.

It is part of an act "to provide revenue for the Government," and should not be construed to defeat that purpose.

The policy of Congress in all tariff legislation has been to impose *ad valorem* duties upon actual or market values. The last customs administrative act (June 10, 1890) contains stringent provisions to that effect. All laws affecting collection of such duties must therefore be read with this fixed policy in view.

Prior to 1873, when the act requiring annual valuations of foreign coins was passed, fluctuations in silver had been very slight, and such estimates then appeared adequate to secure imposition of duties upon the true value of imports with substantial accuracy.

From 1873 to 1890 the trend of silver was downward, and as the valuation of foreign coins made at the first of each year was followed during the same, the Treasury gained revenue in those years, since duties were on the average estimated upon a sum greater than goods from silver countries had really cost.

In prospect and as a result of the Sherman Act of July, 1890, the market value of silver rapidly rose, and in about five months preceding October 1, 1890, appreciated more than 20 per centum. The values of foreign silver coins proclaimed January 1, 1890, were much below their real values during a large part of that year. Consequently during such time goods from silver-standard countries were entered and assessed for duty below their real values; the revenue suffered, and material inequalities were occasioned.

To meet the specified difficulties and effect its fixed policy of assessing duties upon real values, Congress by act of October 1, 1890, so amended the act of 1873 as to require a *quarterly* valuation of foreign coins Such modification then seemed adequate therefor.

After October 1, 1890, silver rapidly declined.

The Indian government for many years had sought to secure the introduction of the gold standard in that country. Influenced thereto by such efforts the Home Government in October, 1892, appointed the Indian currency committee (Lord Herschell's). This committee in May, 1893, made its report and recommended as the first step toward the establishment of the gold standard that the Indian mints be closed, which action it said would probably cause still further decline in silver, but would steady exchange and eventually bring about a gradual rise in the rupee's exchange value until it should attain 16d., or $0.32.

The mints were closed June 26; the exchange and metallic values of the rupee *at once* separated by a wide margin, the former appreciating, the latter

depreciating; and during the whole time thereafter up to October 1, 1894, these values were on an average 20 per cent apart and the treasury was again losing heavily.

The condition thus brought about was unique in the history of monetary affairs. Closing the mints was regarded as only the first step and further action was expected by which the desired gold standard would be fully attained. This expectation was met by the act of September 15, 1899.

The report of Lord Herschell's committee attracted much attention. It was published by Congress and extensively read in the United States, where the effect of its recommendations was watched with unusual interest. The purchasing clause of the Sherman Act was repealed November 1, 1893.

Congress knew the conditions when it enacted the revenue law of August 27, 1894. During more than a year before that date goods from India, paid for, of course, in rupees at exchange valuation, had, under the laws of 1873, as modified in 1890, been estimated for duties at the metal value of the rupee and consequently much under cost price. The Treasury had been deprived of revenue, as it had been for months immediately preceding the act of 1890, material and unjust advantage had been gained by importers of Indian goods over those who brought in like goods from other countries, the spirit of our treaties requiring equal treatment of all imports was being infringed, and it was probable (as afterwards proved the case) that the

exchange and metallic values of the rupee would separate still further, thereby intensifying the troubles.

The old law corrected at the beginning of each quarter inequalities arising from fluctuation in the value of silver, well known for twenty years; but it provided no way to correct the ill effects caused by the radical difference between the exchange and metallic values of the rupee occasioned by closing the Indian mints in the preceding year.

In August, 1894, two obvious obstacles prevented assessment of imports from India at actual values.

The first, a minor one and of long standing, was caused by fluctuations in the market value of silver during a quarter. This was corrected quarterly, losses and gains therefrom might offset each other, and as the trend of silver had for years been downward the Treasury had gained more than it lost thereby.

The second difficulty, a most serious one and recently developed, arose from the fact that the real cost to the American importer of goods from India was determined by the exchange value of the rupee, which since the mints were closed had been and then was largely in excess of its metallic value, according to which the law required entries to be liquidated. This, for more than a year just passed, had caused and was then causing most unjust discriminations and great losses of revenue, with still greater ones in prospect. In respect of the second difficulty, no matter how great it might become, the old law provided no possible corrective at any time.

Notwithstanding it knew the existing conditions and what was expected to happen in the future, we are asked to believe that Congress did not intend by this new legislation of 1894—incorporated in a measure to "provide revenue for the Government"—to correct the most serious defect in the old law, then causing disastrous results. And we are told that while not intending to correct this well-known and most serious defect—the daily results of which were most unfortunate—with great care a remedy was provided for a negligible matter well known when the act of 1890, providing for quarterly estimates, was passed and from which no great future damage could be anticipated.

It is respectfully submitted that no rational man would pursue such an unwise course in his own affairs, and that no construction of its language necessitating such a conclusion concerning Congressional action should be accepted when another is possible. The court must assume that the lawmaker intended to act with at least ordinary wisdom and prudence.

Since July 1, 1893, there has not been a change of 10 per cent in the market price of silver in any quarter year, and when the act of August, 1894, was passed, there was no good reason to expect such a thing. If the construction of the proviso by the courts below is correct, it has been absolutely ineffective and was passed without any reasonable expectation that it would become useful at a time when there was urgent necessity for legislation to correct a patent evil.

The following are perhaps the most useful rules for construing statutes:

> The most universal and effective way of discovering the true meaning of a law, when the words are dubious, is by considering the reason and spirit of it, or the cause which moved the legislature to enact it.
>
> Where a particular construction of a statue would occasion great inconvenience or produce inequality and injustice, that view is to be avoided if another and more reasonable interpretation is present in the statute.
>
> (Blackstone's Com., vol. 1, p. 61; *Knowlton* v. *Moore*, 178 U. S., 41–77.)

Both rules justify the construction of the proviso in section 25, act 1894, asked by the Government. That will tend to bring about assessment of imports at their cost, in harmony with the policy of Congress; it will prevent serious inequality among importers of like articles from different countries; it will avoid infringement of treaty obligations requiring equal treatment to the nations; and it will protect the Treasury against serious loss of revenue.

The construction contended for by the importers would defeat the beneficial ends above specified and cause great inequality, injustice, and loss by reason of past transactions, and possibly still worse consequences from future ones. If Mexico, or any other country now permitting free coinage of silver, should close its mints and the exchange value of its coins appreciate in excess of their metallic value, under such construc-

tion the Treasury might be unable to protect the revenues, and other ills above suggested might immediately follow. (See extract from Report Director of Mint, 1904, p. 99, copied in margin.[a])

Smythe v. *Fiske* (23 Wall., 374, 380).

A thing may be within the letter of the statute and not within its meaning, and within its meaning, though not within its letter. The intention of the lawmaker is the law. Revenue laws are to be construed liberally to carry out the purposes of their enactment. * * * Where doubt exists as to the meaning of a statute, the title may be looked to for aid in its construction. The preexisting law and the reason and purpose of the new enactment are also considerations of great weight.

Church of the Holy Trinity v. *United States* (143 U. S., 457, 459, et seq.), and cases cited.

Platt v. *Union Pacific R. R. Co.* (99 U. S., 48, 59).

In construing a statute aid may be derived from attention to the state of things as it appeared to the legislature when the statute was enacted.

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[a]At this writing the Government of Mexico is understood to be about to take the final step for placing its monetary system on a gold basis. It will follow the same general plan pursued successfully by India, and more recently by the respective governments of the Philippine Islands, the Straits Settlements, and Siam. The essential feature of this plan is that, while the currency of these countries continues to be silver, its coinage is upon government account only, and the amount of the issues is carefully regulated. The effect is that the commercial value of the coin parts company from its bullion value and is held to a fixed relation with gold by governmental action. As of interest in this connection the Bureau of the Mint has compiled from official sources the figures showing this separation of monetary value from metallic value, as shown in the experience o India. They are shown in the Appendix.

Lau Ow Bew v. *United States* (144 U. S., 47, 59).

Statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion.

Durosseau et al. v. *United States* (6 Cranch, 307, 313).

> The spirit as well as the letter of a statute must be respected, and where the whole context demonstrates a particular intent in the legislature to affect a certain object, some degree of implication may be called in to aid that intent.

Heydenfeldt v. *Daney Gold and Silver Mining Company* (93 U. S., 634, 638).

> If a literal interpretation of any part of it (a statute) would operate unjustly, or lead to absurd results, or be contrary to the evident meaning of the act taken as a whole, it should be rejected. There is no better way of discovering its true meaning, when expressions in it are rendered ambiguous by their connection with other clauses, than by considering the necessity for it, and the causes which induced its enactment.

Hawaii v. *Mankichi* (190 U. S., 197, 212).

> The books are full of authorities to the effect that the intention of the lawmaking power will prevail even against the letter of the statute.

United States v. *43 Gallons of Whiskey* (108 U. S., 491, 496).

The laws of Congress are always to be construed so

as to conform to the provisions of a treaty, if it be possible to do so without violence to their language.

Georgia Railroad and Banking Co. v. *Smith* (128 U. S., 174, 181).

> The general purpose of a proviso, as is well known, is to except the clause covered by it from the general provisions of a statute, or from some provisions of it, or to qualify the operation of the statute in some particular. But it is often used in other senses. It is a common practice in legislative proceedings, on the consideration of bills, for parties desirous of securing amendments to them, to precede their proposed amendments with the term "provided," so as to declare that, notwithstanding existing provisions, the one thus expressed is to prevail, thus having no greater signification than would be attached to the conjunction "but" or "and" in the same place, and simply serving to separate or distinguish the different paragraphs or sentences.

THE GOVERNMENT RESPECTFULLY SUBMITS THAT THE DECREES OF THE COURTS BELOW SHOULD BE REVERSED.

HENRY M. HOYT,
Solicitor-General.
J. C. MCREYNOLDS,
Assistant Attorney-General.

JANUARY, 1905.

APPENDIX A.

Bullion and exchange value of the Indian rupee, 1850–1900.

[Report of the Director of the Mint 1904, p. 205.]

Average for calendar year.	Bullion value of silver rupee.		Exchange value of rupee as determined by sale of India council bills in London.		Average for month or value on date given.	Bullion value of silver rupee.		Exchange value of rupee as determined by sale of India council bills in London.	
	Pence.	Cents.	Pence.	Cents.		Pence.	Cents.	Pence.	Cents.
1850	22.69	0.494	24¼	0.536	1878	.....	.....	[b] 19.76	0.437
1851	22.66	.501	24⅛	.534	January	19.97	0.403	.....	.....
1852	22.48	.497	23⅞	.528	April	20.09	.414	.....	.....
1853	22.85	.505	24⅛	.534	July	19.53	.399	.....	.....
1854	22.85	.505	23⅛	.512	October	18.78	.388	.....	.....
1855	22.78	.504	24⅛	.534	1879	.....	.....	[b] 19.96	.441
1856	22.78	.504	25⅛	.556	January	18.69	.378	.....	.....
1857	22.94	.507	24⅜	.545	April	16.26	.374	.....	.....
1858	22.78	.504	(a)	(a)	July	19.16	.392	.....	.....
1859	23.06	.510	(a)	(a)	October	19.57	.387	.....	.....
1860	22.92	.507	(a)	(a)	1880	.....	.....	19.96	.441
1861	22.60	.500	23⅞	.528	January	19.51	.393	.....	.....
1862	22.83	.505	23⅞	.528	April	19.32	.394	.....	.....
1863	22.80	.504	23⅞	.528	July 1	19.56	.398	.....	.....
1864	22.80	.504	23⅞	.528	October 1	19.42	.392	.....	.....
1865	22.69	.502	23¾	.525	1881	.....	.....	19.89	.440
1866	22.71	.502	23	.509	January 1	19.19	.387	.....	.....
1867	22.51	.502	23⅛	.512	April 1	19.37	.391	[c] 19⅞	c. 403
1868	22.48	.497	23⅛	.512	July 1	19.18	.389	[c] 19⅞	c. 398
1869	22.83	.497	23⅛	.514	October 1	19.25	.388	[c] 19⅞	c. 403
1870	22.51	.502	22⅞	.495	1882.				
1871	22.48	.497	23⅛	.512	January 1	19.25	.389	[c] 20	c. 405
1872	22.41	.496	22¾	.503	April 1	19.35	.395	20⅛	c. 408
1873	21.99	.487	22.35	.494	July 1	19.30	.393	[c] 20	[c] 405
1874	21.67	.480	22.22	.491	October 1	19.23	.390	[c] 19⅞	[c] 403
1875	21.06	.466	21.65	.479	1883.				
1876	.....	.....	20.49	.453	January 1	18.63	.376	[c] 19⅞	c. 393
Average for month.					April 1	18.91	.383	[c] 19⅞	c. 393
					July 1	18.74	.382	[c] 19⅞	c. 393
					October 1	18.92	.384	[c] 19⅞	c. 398
January	20.62	.419	.....	.....	1884.				
April	20.04	.400	.....	.....	January 1	18.95	.383	[c] 19⅞	c. 395
July	18.26	.368	.....	.....	April 1	18.83	.385	[c] 19⅞	c. 400
October	19.63	.390	.....	.....	July 1	18.83	.381	[c] 19⅞	c. 395
1877	.....	.....	[b] 20.79	.459	October 1	18.88	.382	[c] 19⅞	c. 393
January	21.38	.424	.....	.....	1885.				
April	20.11	.402	.....	.....	January 1	18.53	.375	19⅛	.388
July	19.97	.406	.....	.....	April 1	18.21	.370	18⅞	.383
October	20.37	.412	.....	.....	July 1	18.30	.371	18⅞	.379
					October 1	17.65	.358	18⅛	.367

[a] Exchange was raised to a prohibitory rate.
[b] Average for the year.
[c] Average by months.

APPENDIX A.—*Bullion and exchange value of the Indian rupee*—Continued.

Value on date given.	Bullion value of silver rupee.		Exchange value of rupee as determined by sale of India council bills in London.		Value on date given.	Bullion value of silver rupee.		Exchange value of rupee as determined by sale of India council bills in London.	
	Pence.	Cents.	Pence.	Cents.		Pence.	Cents.	Pence.	Cents.
1886.					1894.				
January 1 ..	17.44	0.355	17⅛	0.362	January 1 .	11.71	0.237	14⅛	0.291
April 1	17.35	.353	17⅛	.362	April 1	10.50	.214	13⅛	.276
July 1	16.58	.338	16⅞	.342	July 1	10.68	.217	12⅞	.261
October 1 ..	16.58	.334	17⅛	.352	October 3 .	10.85	.220	13⅛	.269
1887.					1895.				
January 1 ..	17.18	.347	18	.365	January 1 .	10.12	.206	12⅞	.258
April 1	16.35	.332	17	.344	April 1	11.42	.233	13⅜	.271
July 1	16.35	.330	16⅞	.342	July 1	11.35	.231	13⅛	.266
October 1 ..	16.51	.333	16⅞	.342	October 1 ..	11.38	.232	13⅜	.279
1888.					1896.				
January 1 ..	16.54	.335	17⅛	.347	January 1 ..	11.33	.231	13⅛	.281
April 1	15.93	.323	16⅛	.332	April 1.....	11.54	.236	14⅛	.289
July 1	15.66	.319	16⅛	.327	July 1.....	11.71	.238	14⅛	.286
October 1 ..	16.12	.328	16⅛	.334	October 1 ..	11.26	.228	14⅛	.291
1889.					1897.				
January 1 ..	15.82	.321	16⅛	.332	January 1..	11.08	.224	15⅛	.307
April 1	15.68	.319	16⅛	.329	April 1.....	10.57	.215	15	.304
July 1	15.61	.318	16⅛	.327	July 1.....	10.24	.208	15	.304
October 1..	15.84	.322	16⅛	.332	October 1..	9.71	.196	.....	.....
1890.					1898.				
January 1..	16.40	.331	17⅛	.347	January 1..	9.89	.200	15⅛	.323
April 1.....	16.30	.331	17⅛	.355	April 1.....	9.54	.192	15⅛	.323
July 1.....	17.24	.359	18⅛	.379	July 1.....	10.08	.204	15⅛	.321
October 1 ..	19.14	.388	19⅛	.388	October 1..	10.47	.211	15⅛	.323
1891.					1899.				
January 1..	17.93	.362	18⅛	.372	January 1..	10.15	.205	16	.324
April 1.....	16.72	.340	17	.344	April 1.....	10.20	.207	16	.324
July 1.....	17.23	.350	17⅛	.355	July 1.....	10.31	.209	16	.324
October 1 ..	16.72	.337	17	.344	October 1..	9.96	.202	16⅛	.327
1892.					1900.				
January 1..	16.25	.327	16⅛	.329	January 1..	10.08	.205	16⅜	.328
April 1.....	14.82	.301	15⅛	.309	April 1.....	10.22	.207	16	.324
July 1.....	14.93	.304	15⅛	.309	July 1.....	10.50	.213	16	.324
October 1 ..	14.17	.287	14⅞	.302	October 1..	.....	.....	.....	.....
1893.									
January 1..	14.24	.287	14⅛	.299					
April 1.....	14.17	.287	14⅛	.296					
July 1.....	12.44	.251	15⅛	.302					
October 1 ..	12.68	.256	15⅛	.309					

APPENDIX B.

Bullion and exchange value of the Indian rupee from June 15 to December 30, 1893.

[Report of the Director of the Mint 1904, p. 206.]

Date.	Bullion value of silver rupee.		Rate of exchange in Calcutta (demand bills) on London.		Date.	Bullion value of silver rupee.		Rate of exchange in Calcutta (demand bills) on London.	
	Pence.	Cents.	Pence.	Cents.		Pence.	Cents.	Pence.	Cents.
1893.					1893.				
June 15	14.30	0.290	14 3/32	0.302	Aug. 1	12.14	0.244	15 1/32	0.313
16	14.30	.289	14 1/32	.303	2	12.17	.245	15 7/16	.313
17	14.30	.289	15	.304	3	12.26	.247	15 7/16	.313
19	14.40	.291	15	.304	4	12.35	.249	15 7/16	.313
20	14.30	.289	15	.304	5	12.44	.251	15 1/32	.312
21	14.21	.287	14 1/32	.303	7	(a)	(a)	15 7/16	.313
22	14.12	.286	15	.304	8	12.63	.256	15 1/32	.313
23	14.12	.286	15 3/16	.306	9	12.82	.261	15 1/4	.314
24	13.93	.281	15 5/16	.307	10	12.91	.263	15 1/32	.316
26	13.37	.270	15 5/16	.307	11	12.86	.260	15 1/4	.314
27	13.00	.262	15 1/32	.312	12	12.82	.259	15 1/32	.313
28	12.63	.254	16	.324	14	12.34	.254	15 1/2	.312
29	11.70	.236	15 1/32	.323	15	12.44	.253	15 1/2	.312
30	11.33	.228	15 29/32	.322	16	12.44	.252	15 5/16	.310
July 1	12.44	.251	15 3/32	.321	17	12.44	.252	15 1/16	.305
3	12.44	.251	15 3/32	.321	18	12.54	.254	14 7/8	.302
5	12.91	.261	15 1/2	.319	19	12.54	.254	15	.304
7	12.68	.256	15 3/32	.321	21	12.63	.257	15 1/32	.305
8	12.26	.248	15 1/32	.320	22	12.91	.263	14 1/32	.303
10	12.31	.250	15 1/32	.317	23	12.96	.262	14 1/32	.303
11	12.26	.247	15 1/4	.319	24	12.86	.260	14 29/32	.302
12	12.26	.247	15 1/32	.320	25	12.63	.256	14 1/32	.300
13	12.26	.247	15 1/4	.319	26	12.63	.256	14 1/4	.299
14	12.40	.250	15 1/16	.318	28	12.63	.256	14 1/32	.300
15	12.49	.252	15 3/32	.319	29	12.63	.256	14 1/32	.300
17	12.54	.253	15 1/16	.318	30	12.82	.260	14 1/32	.300
18	12.44	.252	15 1/16	.318	31	12.82	.260	15 3/32	.305
19	12.26	.247	15 1/16	.318	Sept. 1	12.63	.256	15 1/4	.307
20	12.17	.245	15 1/32	.317	2	12.58	.255	15 1/16	.305
21	12.03	.243	15 1/32	.316	4	12.58	.255	15	.304
22	11.93	.241	15 1/4	.314	5	12.58	.255	15 1/16	.305
24	11.93	.241	15 7/16	.313	6	12.58	.255	15 5/16	.308
25	11.98	.242	15 1/16	.315	7	12.63	.256	15 7/16	.308
26	12.03	.243	15 1/16	.315	8	12.72	.258	15 1/4	.307
27	12.07	.243	15 1/32	.313	9	12.72	.257	15 5/16	.308
28	12.07	.243	15 1/32	.312	11	12.82	.259	15 5/16	.308
29	12.07	.243	15 1/4	.312	12	12.82	.259	15 1/4	.307
31	12.07	.243	15 1/32	.312	13	12.72	.257	15 1/4	.307

a Holiday in India.

APPENDIX B.—*Bullion and exchange value of the Indian rupee from June 15 to December 30, 1893*—Continued.

Date.	Bullion value of silver rupee.		Rate of exchange in Calcutta (demand bills) on London.		Date.	Bullion value of silver rupee.		Rate of exchange in Calcutta (demand bills) on London.	
	Pence.	Cents.	Pence.	Cents.		Pence.	Cents.	Pence.	Cents.
1893.					1893.				
Sept. 14	12.68	0.256	15 3/32	0.307	Nov. 7	12.10	(a)	(a)	(a)
15	12.68	.256	15 3/32	.306	8	12.17	0.246	.....	.....
16	12.72	.257	15 1/4	.307	9	12.12	.244	.....	.....
18	12.77	.258	15 3/32	.308	10	12.05	.243	15 7/32	0.308
19	12.82	.259	15 5/16	.308	11	12.00	.243	.....	.....
20	12.72	.257	15 1/4	.307	13	11.98	.242	15 7/32	.308
21	12.63	.256	15 1/4	.307	14	11.93	.241	15 1/4	.309
22	12.58	.255	15 1/4	.307	15	11.91	.241	15 1/4	.309
23	12.58	.255	15 1/4	.307	16	11.91	.241	15 1/4	.309
25	12.58	.256	15 3/32	.306	17	12.03	.243	15 1/4	.309
26	12.68	.256	15 5/16	.305	18	12.17	.246	.....	.....
27	12.68	.257	15 5/16	.305	20	12.00	.243	15 1/4	.309
28	12.68	.257	15 5/32	.305	21	11.98	.243	15 1/4	.309
29	12.68	.257	15	.304	22	11.98	.243	15 1/4	.309
30	12.68	.257	14 31/32	.303	23	12.03	.243	15 1/4	.309
Oct. 2	12.68	.256	14 31/32	.304	24	12.03	.243	15 1/4	.309
3	12.58	.255	15 1/32	.305	25	11.93	.242	15 3/32	.310
4	12.58	.254	15 1/16	.305	27	11.93	.242	15 3/32	.310
5	12.58	.254	15 1/32	.305	28	11.93	.241	15 3/32	.310
6	12.58	.254	15 1/16	.305	29	11.89	.241	15 1/4	.309
7	12.58	.254	15 3/32	.306	30	11.89	(b)	15 7/32	.308
9	12.58	.254	.....	.....	Dec. 1	11.87	.240	15 5/16	.308
10	12.61	.255	15 3/32	.306	2	11.87	.240	15 5/16	.308
11	12.58	.254	15 1/8	.307	4	11.87	.240	15 5/16	.308
12	12.54	.254	15 3/32	.307	5	11.87	.240	15 5/16	.308
13	12.49	.253	15 1/16	.308	6	11.91	.242	15 1/16	.308
14	12.49	.253	15 1/16	.308	7	11.98	.243	15 1/16	.308
16	12.51	.253	15 1/16	.307	8	11.93	.242	15 5/16	.307
17	12.51	.253	.....	.....	9	11.89	.241	15 1/8	.307
18	12.54	.253	.....	.....	11	11.89	.241	15 1/4	.307
19	12.54	.253	.....	.....	12	11.89	.241	15 1/4	.307
20	12.54	.253	.....	.....	13	11.89	.241	15 1/16	.305
21	12.54	.253	15 1/16	.308	14	11.89	.241	15 1/8	.305
23	12.58	.254	15 7/32	.308	15	11.89	.241	15 1/16	.305
24	12.61	.254	.....	.....	16	11.89	.241	15 3/32	.306
25	12.54	.253	.....	.....	18	11.89	.241	15 3/32	.306
26	12.42	.251	15 1/32	.307	19	11.98	.243	15 3/32	.306
27	12.35	.249	15 1/32	.307	20	12.00	.244	15 1/16	.305
28	12.31	.248	15 1/16	.304	21	11.93	.242	15 3/32	.306
30	12.03	.242	15 1/16	.308	22	11.93	.242	15 1/8	.307
31	11.70	.236	15 1/32	.307	23	11.93	.242	.....	.....
Nov. 1	11.70	.236	15 1/32	.307	26	(c)	(c)	.....	.....
2	11.89	.240	15 1/32	.307	27	11.93	.242	15 1/4	.307
3	11.89	.240	15 1/16	.308	28	11.80	.241	15 1/16	.306
4	11.93	.241	15 1/16	.308	29	11.70	.240	15 1/16	.305
6	12.03	.243	15 1/32	.307	30	11.80	.240	15 3/32	.306

a Holiday in New York. b Holiday in United States. c Holiday in London.

APPENDIX C.

VALUES OF FOREIGN COINS.

1900.

Department Circular No. 39.

TREASURY DEPARTMENT,
BUREAU OF THE MINT,
Washington, D. C., April 1, 1900.

Hon. LYMAN J. GAGE,
Secretary of the Treasury.

SIR: In pursuance of the provisions of section 25 of the act of August 28, 1894, I present in the following table an estimate of the values of the standard coins of the nations of the world: [a]

Values of foreign coins.

Country.	Standard.	Monetary unit.	Value in terms of U. S. gold dollar.	Coins.
Argentine Republic	Gold and silver.	Peso	$0.965	Gold: Argentine ($4.824) and ½ argentine. Silver: Peso and divisions.
Austria-Hungary	Gold	Crown	.203	Gold: Former system—4 florins ($1.929), 8 florins ($3.858), ducat ($2.287), and 4 ducats ($9.149). Silver: 1 and 2 florins. Gold: Present system—20 crowns ($4.052); 10 crowns ($2.026).
Belgium	Gold and silver.	Franc	.193	Gold: 10 and 20 francs. Silver: 5 francs.
Bolivia	Silver	Boliviano	.436	Silver: Boliviano and divisions.
Brazil	Gold	Milreis	.546	Gold: 5, 10, and 20 milreis. Silver: ½, 1, and 2 milreis.
*	*	*	*	*
France	Gold and silver.	Franc	.193	Gold: 5, 10, 20, 50, and 100 francs. Silver: 5 francs.
German Empire	Gold	Mark	.238	Gold: 5, 10, and 20 marks.

[a] The coins of silver-standard countries are valued by their pure silver contents, at the average market price of silver for the three months preceding the date of this circular.

APPENDIX C.—*Values of foreign coins*—Continued.

Country.	Standard.	Monetary unit.	Value in terms of U. S. gold dollar.	Coins.
Great Britain	Gold	Pound sterling	$4.866½	Gold: sovereign (pound sterling) and ½ sovereign.
Greece	Gold and silver.	Drachma	.193	Gold: 5, 10, 20, 50, and 100 drachmas. Silver: 5 drachmas.
Haiti	Gold and silver.	Gourde	.965	Silver: gourde.
India	Silver	Rupee[a]	.207	Gold: mohur ($7.105). Silver: rupee and divisions.
Italy	Gold and silver.	Lira	.193	Gold: 5, 10, 20, 50, and 100 lire. Silver: 5 lire.
Japan	Gold	Yen	.498	Gold: 5, 10, and 20 yen. Silver: 10, 20, and 50 sen.
Liberia	Gold	Dollar	1.000	
Mexico	Silver	Dollar	.473	Gold: dollar ($0.983), 2½, 5, 10, and 20 dollars. Silver: dollar (or peso) and divisions.
*	*	*		*

[a] Value of the rupee to be determined by consular certificate.

Respectfully, GEO. E. ROBERTS,
Director of the Mint.

[Only a part of circular is here printed, omissions being indicated by asterisks.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., April 1, 1900.

The foregoing estimate by the Director of the Mint, of the values of foreign coins, I hereby proclaim to be the values of such coins in terms of the money of account of the United States, to be followed in estimating the value of all foreign merchandise exported to the United States on or after April 1, 1900, expressed in any of such metallic currencies.

L. J. GAGE,
Secretary of the Treasury.

APPENDIX D.

[Report of the Director of the Mint, 1897. Pages 196–203.]

XXXIX.—Highest, lowest, and average price of silver bullion, and value of an ounce fine, bullion value of a United States silver dollar, and commercial ratio of silver to gold, from July 1, 1873, to June 30, 1897.

Fiscal years.	Highest.	Lowest.	Average London price per ounce standard, 0.925.	Equivalent value of ounce fine with exchange at par, $4.8665.	Equivalent value of ounce fine based on average price of exchange.	Bullion value of a United States silver dollar at average price of silver, exchange at par.	Commercial ratio of silver to gold.
1873.	*Pence.*	*Pence.*	*Pence.*				
July	59¼	59 5/16	59.344	$1.30089	$1.29982	$1.00824	15.89
August	59 7/16	58 13/16	59.000	1.29332	1.28186	1.00030	15.96
September	59¼	58 13/16	58.968	1.29247	1.27864	.99961	15.99
October	59	58¼	58.750	1.28786	1.26069	.99607	16.05
November	58¼	57¼	58.000	1.27142	1.23981	.98336	16.25
December	58 1/16	58	58.036	1.27031	1.26136	.98250	16.27
1874.							
January	59¼	58	58.750	1.28786	1.28795	.99607	16.05
February	59	58¼	58.750	1.28786	1.28954	.99607	16.05
March	59¼	58¼	58.937	1.29196	1.29422	.99925	16.00
April	59¼	58 7/16	58.906	1.29579	1.29619	1.00221	15.95
May	58¼	58¼	58.687	1.28648	1.29798	.99524	16.06
June	59	58¼	58.750	1.28786	1.29805	.99607	16.05
Average	a 59¼	a 57¼	58.739	1.28784	1.28217	.99458	16.05
July	58¼	58¼	58.375	1.27964	1.28798	.98972	16.15
August	58¼	57¼	58.000	1.27142	1.28018	.98336	16.25
September	58	57¼	57.687	1.26456	1.26671	.97805	16.34
October	57 13/16	57¼	57.718	1.26524	1.26807	.97858	16.33
November	58¼	57¼	58.000	1.27142	1.27756	.98336	16.25
December	57¼	57¼	57.500	1.26046	1.26836	.97488	16.40
1875.							
January	57¼	57¼	57.562	1.26182	1.27243	.97593	16.38
February	57¼	57¼	57.437	1.25902	1.26050	.97377	16.41
March	57¼	57	57.125	1.27690	1.24800	.98760	16.18
April	57¼	57¼	57.250	1.25498	1.26104	.97064	16.47
May	57	56¼	56.562	1.23990	1.24844	.95898	16.67
June	56¼	55¼	55.687	1.22072	1.22975	.94415	16.77
Average	a 58¼	a 55¼	57.408	1.26050	1.26408	.97491	16.38

a Denotes highest and lowest for each year.

XXXIX.—*Highest, lowest, and average price of silver bullion, etc.*—Cont'd.

Fiscal years.	Highest.	Lowest.	Average London price per ounce standard, 0.925.	Equivalent value of ounce fine with exchange at par, $4.8665.	Equivalent value of ounce fine based on average price of exchange.	Bullion value of a United States silver dollar at average price of silver, exchange at par.	Commercial ratio of silver to gold.
1875.	*Pence.*	*Pence.*	*Pence.*				
July	55⅛	55 1/16	55.781	$1.22278	$1.22868	$0.94576	16.90
August	56⅛	56	56.312	1.23442	1.24038	.95474	16.74
September	56⅛	56 1/16	56.218	1.23236	1.22368	.95315	16.77
October	57⅛	56⅛	56.987	1.24922	1.23856	.96619	16.54
November	56 13/16	56⅛	56.781	1.24470	1.24304	.96269	16.60
December	56⅛	56⅛	56.375	1.23580	1.24151	.95581	16.72
1876.							
January	56⅛	54⅞	55.500	1.21662	1.22175	.94097	16.99
February	54⅞	53	53.937	1.18256	1.18356	.91448	17.48
March	54⅛	52⅛	53.375	1.17004	1.17809	.90195	17.60
April	54	53⅛	53.750	1.17826	1.18395	.91131	17.54
May	54	52	53.000	1.16182	1.16981	.89859	17.79
June	52	50	51.000	1.11797	1.12567	.86447	18.49
Average	a 57⅛	a 50	54.917	1.20386	1.20655	.93109	17.18
July	51⅛	46⅞	49.125	1.07687	1.08429	.83277	19.19
August	53⅛	50½	52.000	1.13990	1.14634	.88184	18.13
September	52 5/16	51⅛	51.813	1.13936	1.13372	.88122	18.14
October	53⅛	52	52.812	1.15770	1.15258	.89540	17.85
November	55	53½	54.062	1.19733	1.17860	.92605	17.26
December	58⅛	55⅛	56.875	1.24676	1.24100	.96429	16.58
1877.							
January	58⅛	56⅞	57.567	1.26193	1.25843	.97602	16.38
February	57⅛	56	56.875	1.24676	1.24356	.96429	16.58
March	56⅛	53⅛	54.687	1.19880	1.19473	.92928	17.24
April	55	53⅛	54.250	1.19012	1.19374	.92048	17.36
May	54⅛	53⅛	54.125	1.18648	1.19485	.91766	17.42
June	54	53⅛	53.750	1.17826	1.18637	.91131	17.54
Average	a 58⅛	a 46⅞	53.997	1.18502	1.18401	.91671	17.47
July	54⅛	53⅞	54.187	1.18782	1.19260	.91870	17.40
August	54⅛	54	54.125	1.18648	1.18538	.91766	17.42
September	55⅛	54⅛	54.750	1.20018	1.20005	.92826	17.22
October	55⅛	54⅛	55.125	1.20840	1.20604	.93462	17.10
November	55	54	54.500	1.19470	1.19065	.92402	17.30
December	54⅛	53⅞	54.000	1.18372	1.18649	.91553	17.46
1878.							
January	54	53⅛	53.750	1.17826	1.17426	.91131	17.54
February	55⅛	53 1/16	54.593	1.19672	1.19219	.92558	17.27
March	55	54⅛	54.562	1.19606	1.19987	.92507	17.28
April	54⅛	53⅞	54.062	1.18510	1.19228	.91660	17.44
May	53⅞	53⅛	53.562	1.17405	1.17812	.90805	17.60
June	53 7/16	52⅛	52.968	1.16112	1.16314	.89805	17.80
Average	a 55⅛	a 52⅛	54.182	1.18780	1.18842	.91862	17.40

a Denotes highest and lowest for each year.

XXXIX.—*Highest, lowest, and average price of silver bullion, etc.*—Cont'd.

Fiscal years.	Highest.	Lowest.	Average London price per ounce standard, 0.925.	Equivalent value of ounce fine with exchange at par, $4.8665.	Equivalent value of ounce fine based on average price of exchange.	Bullion value of a United States silver dollar at average price of silver, exchange at par.	Commercial ratio of silver to gold.
1878.	*Pence.*	*Pence.*	*Pence.*				
July	52 1/2	52 5/16	52.562	$1.15222	$1.15304	$0.89117	17.94
August	52	52	52.437	1.14948	1.15385	.88905	17.98
September	52	51 1/4	51.812	1.13577	1.13659	.87844	18.20
October	51 9/16	49	50.531	1.10769	1.10821	.85672	18.66
November	50	50	50.562	1.10837	1.10917	.85725	18.65
December	50 1/8	49	50.093	1.09809	1.10069	.84930	18.82
1879.							
January	51	49	50.031	1.09673	1.10054	.84825	18.84
February	50	49	49.875	1.09331	1.09837	.84560	18.90
March	50	48	49.562	1.08645	1.09272	.84030	19.02
April	50	49	49.812	1.09193	1.09631	.84458	18.92
May	51	50	50.875	1.11526	1.12131	.86258	18.53
June	53	51	52.250	1.14538	1.15303	.88587	18.04
Average	a53	a48	50.866	1.11505	1.11848	.86242	18.54
July	52	51	51.685	1.13167	1.13412	.87597	18.26
August	51 3/4	52	51.601	1.13080	1.12534	.87421	18.28
September	51	51	51.3125	1.13030	1.12439	.87421	18.28
October	53	51 9/16	52.271	1.14674	1.13960	.88093	18.02
November	53	53	53.386	1.17003	1.16319	.90494	17.66
December	53	52	52.5975	1.15222	1.14761	.89117	17.94
1880.							
January	52	52 1/16	52.480	1.15085	1.14700	.89011	17.96
February	52 1/16	52	52.326	1.14674	1.14594	.88693	18.02
March	52	51	51.995	1.14126	1.14511	.88269	18.11
April	52	51	51.975	1.13989	1.14953	.88163	18.13
May	52	52 1/16	52.131	1.14126	1.14726	.88269	18.11
June	52	52 1/16	52.454	1.15085	1.15712	.89011	17.96
Average	a53	a51	52.218	1.14436	1.14397	.88509	18.06
July	52 1/16	52	52.687	1.15496	1.15348	.89328	17.90
August	52 1/16	51	52.635	1.14400	1.14873	.88481	18.06
September	52 1/16	52	52.437	1.14674	1.14246	.88901	18.02
October	52 1/16	51	52.143	1.14060	1.13798	.88481	18.06
November	51 1/16	51	51.75	1.13441	1.12698	.87739	18.21
December	52	51	51.82	1.13578	1.12669	.87845	18.20
1881.							
January	51	51	51.28	1.12345	1.11821	.86891	18.40
February	52	51	51.41	1.13578	1.13407	.87845	18.20
March	52	52	52.19	1.14400	1.13616	.88481	18.06
April	52 1/16	52	52.07	1.14126	1.13697	.88269	18.11
May	52	51	51.66	1.13304	1.13896	.87633	18.24
June	51	51	51.33	1.12482	1.12532	.86997	18.37
Average	a52	a51	51.937	1.13852	1.13508	.88057	18.15

a Denotes highest and lowest for each year.

XXXIX.—*Highest, lowest, and average price of silver bullion, etc.*—Cont'd.

Fiscal year.	Highest.	Lowest.	Average London price per ounce standard, 0.925.	Equivalent value of ounce fine with exchange at par, $1.8665.	Equivalent value of ounce fine based on average price of exchange.	Bullion value of a United States silver dollar at average price of silver, exchange at par.	Commercial ratio of silver to gold.
1881.	*Pence.*	*Pence.*	*Pence.*				
July	52⅛	50⅞	51.355	$1.12619	$1.12454	$0.87103	18.35
August	51⅞	51⅛	51.559	1.12893	1.12543	.87315	18.31
September	51 13/16	51⅛	51.706	1.13441	1.12833	.87739	18.22
October	52⅛	51⅛	51.895	1.13715	1.13199	.87951	18.17
November	52	51⅞	51.487	1.12893	1.13396	.87315	18.31
December	52	51⅞	51.889	1.13715	1.13282	.87951	18.17
1882.							
January	52⅛	51⅞	51.980	1.13989	1.14121	.88163	18.13
February	52⅛	52	52.028	1.13989	1.14087	.88163	18.13
March	52 1/16	51 13/16	51.963	1.13852	1.14700	.88057	18.15
April	52⅛	52 1/16	52.122	1.14126	1.15081	.88269	18.11
May	52⅛	52⅛	52.223	1.14263	1.15386	.88375	18.09
June	52⅛	51⅞	52.016	1.13979	1.13879	.88163	18.13
Average	a52⅛	a50⅞	51.812	1.13623	1.13817	.87880	18.19
July	52	51⅛	51.8177	1.13578	1.14079	.87845	18.20
August	52 1/16	51⅛	51.974	1.13989	1.14659	.88163	18.13
September	52 1/16	51⅛	51.913	1.13715	1.14291	.87951	18.17
October	51 13/16	51⅛	51.75	1.13441	1.13350	.87739	18.22
November	51⅛	51	51.39	1.12619	1.12258	.87103	18.35
December	51	50	50.48	1.10701	1.10306	.85620	18.67
1883.							
January	50⅛	50⅛	50.264	1.10153	1.10058	.85196	18.76
February	51	50⅛	50.6025	1.10813	1.10912	.85706	18.65
March	51 1/16	50⅛	51.022	1.11797	1.11302	.86447	18.49
April	50⅞	50⅛	50.572	1.10811	1.10704	.85705	18.65
May	50 7/16	50 5/16	50.206	1.10140	1.10198	.85186	18.76
June	50 7/16	50 1/16	50.187	1.10160	1.10835	.85201	18.76
Average	a52 1/16	a50	51.023	1.11826	1.11912	.86490	18.48
July	50⅛	50 1/16	50.375	1.10510	1.10862	.85472	18.75
August	50 7/16	50⅛	50.524	1.10754	1.10831	.85661	18.66
September	50⅛	50⅛	50.731	1.11205	1.11047	.86010	18.58
October	51	50⅛	50.914	1.11649	1.11305	.86253	18.64
November	50⅛	50⅛	50.702	1.11172	1.10887	.85954	18.59
December	51	50 7/16	50.843	1.11440	1.11117	.85191	18.54
1884.							
January	51	50⅛	50.865	1.11501	1.11667	.86239	18.53
February	51⅛	51	51.135	1.12093	1.12832	.86696	18.44
March	51⅛	50 13/16	50.937	1.11679	1.12513	.86361	18.51
April	51	50⅛	50.757	1.11265	1.12118	.86056	18.57
May	50 13/16	50⅛	50.839	1.11459	1.11856	.86206	18.54
June	50 13/16	50⅛	50.800	1.11359	1.11318	.86129	18.56
Average	a51⅛	a50 7/16	50.791	1.11339	1.11529	.86115	18.56

a Denotes highest and lowest for each year.

XXXIX.—*Highest, lowest, and average price of silver bullion, etc.*—Cont'd.

Fiscal year.	Highest.	Lowest.	Average London price per ounce standard, 0.925.	Equivalent value of ounce fine with exchange at par, $4.8665.	Equivalent value of ounce fine based on average price of exchange.	Bullion value of a United States silver dollar at average price of silver, exchange at par.	Commercial ratio of silver to gold.
1884.	*Pence.*	*Pence.*	*Pence.*				
July	50⅛	50 1/16	50.788	$1.11333	$1.10991	$0.86109	18.56
August	50⅛	50⅛	50.779	1.11313	1.10953	.86093	18.57
September	50 1/16	50⅛	50.738	1.11224	1.10866	.86024	18.58
October	50⅛	50 7/16	50.724	1.11193	1.10744	.86000	18.59
November	50 7/16	49 15/16	50.007	1.09623	1.09241	.84984	18.86
December	49¼	49¼	49.641	1.08818	1.08500	.84163	18.99
1885.							
January	50	49⅜	49.688	1.08836	1.08089	.84177	18.99
February	49¼	48⅞	49.125	1.07791	1.07505	.83390	19.18
March	49 7/16	49	49.094	1.07561	1.07610	.83191	19.32
April	49⅜	48⅝	49.375	1.07778	1.08299	.83334	19.18
May	50	48⅝	49.437	1.07929	1.08915	.83476	19.15
June	49⅛	49	49.125	1.07751	1.07818	.83338	19.18
Average	*a* 50⅛	*a* 48⅞	49.843	1.09262	1.09226	.84507	18.92
July	49 3/16	49⅛	49.156	1.07839	1.07768	.83406	19.17
August	49 3/16	48 7/16	48.812	1.07045	1.07075	.82792	19.31
September	48⅛	47⅛	47.812	1.04895	1.04166	.80534	19.80
October	47 5/16	47⅛	47.406	1.03967	1.03887	.80411	19.88
November	47⅛	47 5/16	47.406	1.03950	1.03587	.80398	19.88
December	47⅛	46⅜	47.187	1.03803	1.03338	.79819	20.01
1886.							
January	47	46 7/16	46.783	1.02444	1.02951	.79234	20.17
February	46⅝	46⅛	46.685	1.02389	1.02852	.79152	20.19
March	46⅝	46 1/16	46.766	1.02517	1.02999	.79290	20.16
April	46 1/16	46	46.386	1.01683	1.02032	.78645	20.33
May	46	44⅜	45.425	.99577	1.00046	.77016	20.76
June	45⅛	44 1/16	44.885	.98283	.98708	.76015	21.03
Average	*a* 49 3/16	*a* 44 1/16	47.038	1.03112	1.03295	.79750	20.04
July	44⅛	42	43.873	.96175	.96395	.74385	21.49
August	42⅛	42	42.310	.92748	.92333	.71734	22.28
September	44⅛	42⅛	43.841	.96105	.95691	.74331	21.50
October	45⅛	44⅛	45.089	.98840	.98333	.76446	20.91
November	47	45⅛	46.486	1.01903	1.01424	.78815	20.28
December	46⅛	45⅛	46.068	1.00986	1.00384	.78106	20.56
1887.							
January	47⅛	46⅛	46.833	1.02663	1.02560	.79403	20.13
February	47	46 3/16	46.660	1.02284	1.02569	.79110	20.21
March	46 7/16	44 15/16	45.440	.99610	.99706	.77042	20.76
April	44⅜	43⅛	43.964	.96374	.96490	.74589	21.44
May	43⅛	43 7/16	43.580	.95532	.95658	.73887	21.63
June	44⅛	43⅛	43.968	.96383	.96130	.74546	21.44
Average	*a* 47⅛	*a* 42	44.843	.98301	.98148	.76029	21.02

a Denotes highest and lowest for each year.

XXXIX.—*Highest, lowest, and average price of silver bullion, etc.*—Continued.

Fiscal years.	Highest.	Lowest.	Average London price per ounce standard, 0.925.	Equivalent value of ounce fine with exchange at par, $4.8665.	Equivalent value of ounce fine based on average price of exchange.	Bullion value of a United States silver dollar at average price of silver, exchange at par.	Commercial ratio of silver to gold.
1887.	*Pence.*	*Pence.*	*Pence.*				
July	44 7/16	43 1/2	44.148	$0.96777	$0.96335	$0.74850	21.36
August	45 3/16	44 1/4	44.570	.97702	.97154	.75566	21.15
September	45	44 7/16	44.642	.97860	.97287	.75688	21.12
October	44 1/2	43 13/16	44.159	.96802	.96442	.74870	21.35
November	44	43 11/16	43.840	.96102	.95788	.74328	21.51
December	45 1/4	43 13/16	44.368	.97260	.96972	.75224	21.25
1888.							
January	44 9/16	44 3/16	44.380	.97286	.97219	.75244	21.24
February	44 3/16	43 13/16	44.033	.96525	.96421	.74656	21.41
March	43 3/4	43	43.293	.94903	.95083	.73401	21.78
April	42 5/8	42 1/4	42.669	.93535	.93709	.72343	22.10
May	42 1/4	41 1/8	42.048	.92174	.92577	.71249	22.42
June	42 1/4	42	42.092	.92271	.92683	.71365	22.43
Average	a 45 3/16	a 41 1/8	43.675	.95741	.95617	.74008	21.59
July	42 5/16	42	42.111	.92312	.92634	.71418	22.39
August	42 1/2	41 15/16	42.007	.92085	.92251	.71221	22.44
September	44 1/4	42 1/16	43.160	.94612	.94971	.73176	21.84
October	43 1/2	42 5/8	43.097	.94474	.94697	.73069	21.88
November	43 1/4	42 1/4	45.029	.94325	.94595	.73163	21.85
December	42 5/8	42 5/16	42.516	.93200	.93581	.72084	22.18
1889.							
January	42 13/16	42 1/4	42.544	.93261	.93616	.72131	22.16
February	42 3/4	42 1/4	42.594	.93371	.93752	.72216	22.13
March	42 3/4	42 1/4	42.521	.93211	.93652	.72092	22.17
April	42 5/16	42 1/4	42.185	.92474	.92918	.71522	22.35
May	42 1/4	41 15/16	42.162	.92424	.92893	.71484	22.36
June	42 5/16	42	42.034	.92143	.92547	.71266	22.43
Average	a 44 1/4	a 41 15/16	42.499	.93163	.93510	.72055	22.18
July	42 5/16	42	42.159	.92417	.92638	.71462	22.36
August	42 5/16	42 1/4	42.349	.92834	.92959	.71801	22.26
September	42 1/16	42	42.522	.93213	.93477	.72044	22.17
October	43 1/4	42 1/4	42.944	.94382	.94026	.72998	21.90
November	44	43 1/4	43.923	.96284	.95959	.74469	21.46
December	44	43 5/8	43.907	.96381	.95894	.74544	21.44
1890.							
January	44 5/8	44 1/4	44.502	.97554	.97447	.75451	21.19
February	44 1/4	43 1/4	44.042	.96545	.96563	.74671	21.41
March	44 1/2	43 3/4	43.908	.96251	.96024	.74444	21.47
April	48	43 1/4	45.451	.96634	.99751	.74699	21.39
May	47 1/4	46	46.971	1.02966	1.02820	.79637	20.07
June	49	46 1/2	47.727	1.04623	1.04778	.80919	19.75
Average	a 49	a 42	44.196	.96883	.96839	.74932	21.33

a Denotes highest and lowest for each year.

XXXIX.—*Highest, lowest, and average price of silver bullion, etc.*—Continued.

Fiscal years.	Highest.	Lowest.	Average London price per ounce standard, 0.925.	Equivalent value of ounce fine with exchange at par, $4.8665.	Equivalent value of ounce fine based on average price of exchange.	Bullion value of a United States silver dollar at average price of silver, exchange at par.	Commercial ratio of silver to gold.
1890.	*Pence.*	*Pence.*	*Pence.*				
July	50¼	47 9/16	49.201	$1.07854	$1.08367	$0.83418	19.16
August	54¼	50¼	52.707	1.15540	1.15643	.89363	17.89
September	54¼	50	53.123	1.16452	1.15946	.90068	17.74
October	51⅛	48⅛	49.708	1.08966	1.08821	.84278	18.97
November	49¼	45	47.305	1.03698	1.03404	.80183	19.93
December	49⅛	47⅛	48.135	1.05518	1.04939	.81611	19.59
1891.							
January	48¼	46⅞	47.9399	1.05085	1.05034	.81276	19.67
February	46¼	44⅛	45.5470	.99844	1.00202	.77223	20.70
March	45 5/16	44⅛	44.928	.98487	.98854	.76173	20.98
April	45	43⅞	44.528	.97610	.99453	.75495	21.17
May	45⅛	44⅛	44.481	.97507	.97805	.75415	21.20
June	46	44⅛	44.973	.98586	.98924	.76250	20.97
Average	*a* 54⅛	*a* 43⅞	47.714	1.04195	1.04780	.80588	19.83
July	46¼	45⅛	46.002	1.00841	1.00825	.77994	20.49
August	46 1/16	44 1/16	45.112	.98890	.99890	.76485	20.90
September	45 5/16	44¼	45.016	.98680	.97767	.76322	20.95
October	45	44 1/16	44.555	.97669	.97046	.75540	21.16
November	44 1/16	43½	43.690	.95773	.95257	.74044	21.58
December	44⅛	43¼	43.775	.95959	.95517	.74195	21.54
1892.							
January	43⅞	41¾	42.830	.93888	.93515	.72616	22.01
February	41 13/16	41⅛	41.460	.90885	.91106	.70236	22.74
March	41⅛	39	40.087	.87875	.89699	.67965	23.52
April	40⅛	39⅛	39.705	.86583	.87229	.66966	23.87
May	40⅛	39 1/16	40.060	.87816	.88029	.67920	23.53
June	41⅛	40 1/16	40.564	.88921	.89298	.68772	23.24
Average	*a* 46¼	*a* 39	42.737	.93648	.93723	.72430	22.07
July	40 5/16	39 1/16	39.632	.86877	.87181	.67193	23.79
August	39 1/16	37⅛	38.295	.83947	.84203	.65136	24.62
September	38 5/16	38⅛	38.158	.83646	.83801	.64694	24.71
October	39⅛	38⅛	38.937	.85354	.85287	.66013	24.21
November	39⅛	38⅜	38.971	.85428	.85512	.66073	24.19
December	39⅛	37 1/16	38.346	.84058	.84274	.65013	24.59
1893.							
January	38 5/16	38⅛	38.331	.84026	.84217	.64988	24.60
February	38⅛	38⅛	38.356	.84080	.84316	.65030	24.46
March	38⅛	37 5/16	38.108	.83537	.83255	.64610	24.74
April	38 1/16	37⅛	38.028	.83361	.83610	.64495	24.79
May	38 5/16	37⅛	38.069	.83451	.83856	.64544	24.77
June	38⅛	30⅛	37.279	.81719	.81654	.63204	25.29
Average	*a* 40 5/16	*a* 30⅛	38.375	.84123	.84263	.65063	24.57

a Denotes highest and lowest for each year.

XXXIX.—*Highest, lowest, and average price of silver bullion, etc.*—Cont'd.

Fiscal year.	Highest.	Lowest.	Average London price per ounce standard, 0.925.	Equivalent value of ounce fine with exchange at par, $4.8665.	Equivalent value of ounce fine based on average price of exchange.	Bullion value of a United States silver dollar at average price of silver, exchange at par.	Commercial ratio of silver to gold.
1893.	*Pence.*	*Pence.*	*Pence.*				
July	34⅛	32¼	33.060	$0.72471	$0.71981	$0.59952	28.52
August	34⅛	32⅛	33.944	.74409	.74837	.57559	27.78
September	34⅛	33⅛	34.120	.74799	.74709	.57854	27.63
October	34⅛	31¼	33.608	.73672	.73339	.56723	28.05
November	32¼	31⅛	32.240	.70673	.70390	.54441	29.25
December	32⅝	31¼	32.015	.70180	.70177	.54275	29.45
1894.							
January	31⅞	30¼	33.338	.68742	.68694	.53130	30.07
February	30¼	27¼	29.169	.63941	.64052	.49540	32.32
March	28	27	27.286	.59814	.60037	.46451	34.56
April	29⅛	28⅛	28.802	.63138	.63382	.49022	32.74
May	29⅛	28⅛	28.704	.62921	.63180	.48865	32.85
June	28⅛	28⅛	28.685	.62879	.63129	.48826	32.87
Average	a 34⅛	a 27	31.247	.68136	.68117	.52726	30.50
July	28⅛	28⅞	28.673	.62854	.63041	.48613	32.79
August	30¼	28⅛	29.377	.64398	.64474	.49807	32.06
September	30¼	29⅜	29.588	.64861	.64802	.50165	31.89
October	29⅝	28⅛	29.150	.63900	.64005	.49422	32.29
November	29⅝	28¼	28.977	.63520	.63628	.49128	32.48
December	28¼	27⅜	27.747	.60825	.61063	.47044	33.85
1895.							
January	27⅞	27⅛	27.331	.59914	.60190	.46539	34.34
February	27⅛	27⅜	27.440	.60152	.60444	.46523	34.19
March	29¼	27¼	28.337	.62119	.62447	.48045	33.10
April	30⅛	29¼	30.415	.66674	.67059	.51568	30.82
May	30⅛	30⅛	30.625	.67133	.67289	.51923	30.72
June	30⅛	30⅜	30.460	.66771	.67139	.51643	30.78
Average	a 30⅛	a 27⅛	29.010	.63593	.63798	.49183	32.40
July	30⅛	30⅜	30.439	.66727	.67187	.51484	30.97
August	30⅛	30⅛	30.393	.66625	.67122	.51201	30.87
September	30⅜	30⅜	30.489	.66836	.67254	.51694	30.92
October	31⅛	30⅛	30.928	.67798	.68010	.52437	30.49
November	31	30⅛	30.789	.67493	.68592	.52201	30.62
December	30⅛	30	30.395	.66631	.66963	.51534	31.02
1896.							
January	30⅛	30⅛	30.649	.67186	.67518	.51966	30.76
February	31⅜	30⅛	30.992	.67939	.68104	.52546	30.41
March	31⅛	31⅛	31.372	.68772	.68988	.53190	30.05
April	31⅞	30⅛	31.060	.68087	.68401	.52661	30.36
May	31⅛	30⅛	31.078	.68126	.68851	.52691	30.34
June	31⅝	31⅞	31.403	.68840	.68091	.53243	30.02
Average	a 31⅛	a 30	30.832	.67588	.68005	.52242	30.58

a Denotes highest and lowest for each year.

XXXIX.—*Highest, lowest, and average price of silver bullion, etc.*—Cont'd.

Fiscal year.	Highest.	Lowest.	Average London price per ounce standard, 0.925.	Equivalent value of ounce fine with exchange at par, $4.8665.	Equivalent value of ounce fine based on average price of exchange.	Bullion value of a United States silver dollar at average price of silver, exchange at par.	Commercial ratio of silver to gold.
1896.	*Pence.*	*Pence.*	*Pence.*				
July	31¼	31¼	31.4399	$0.68919	$0.69185	$0.53304	29.99
August	31⅛	30¾	30.9593	.67866	.67879	.52490	30.45
September	30⅞	30	30.3400	.66508	.66169	.51439	31.08
October	30⅞	29¾	30.0347	.65840	.65528	.50923	31.39
November	30	29¼	29.9212	.65590	.65470	.50748	31.51
December	30	29⅛	29.9125	.65571	.65605	.50715	31.52
1897.							
January	29⅛	29⅛	29.7275	.65166	.65235	.50401	31.72
February	29¼	29⅛	29.7119	.65131	.65169	.50379	31.73
March	29⅛	28⅞	28.9647	.63494	.63577	.49108	32.55
April	28¼	28⅛	28.3726	.62195	.62323	.48034	33.28
May	28⅛	27¼	27.7750	.60886	.61010	.47091	33.95
June	27¼	27¼	27.5817	.60462	.60536	.46763	34.19
Average	a31¼	a27¼	29.5617	.64794	.64807	.50116	31.94

a Denotes highest and lowest for each year.

APPENDIX E.

XXI.—Highest, lowest, and average price of bar silver in London, per ounce, British standard (0.925), since 1833, and the equivalent in United States gold coin of an ounce 1,000 fine, taken at the average price.

[Report of the Director of the Mint, 1902, pages 168–170.]

Calendar years.	Highest quotation.	Lowest quotation.	Average quotation.	Value of a fine ounce at average quotation.	Calendar years.	Highest quotation.	Lowest quotation.	Average quotation.	Value of a fine ounce at average quotation.
	d.	*d.*	*d.*	*Dollars.*		*d.*	*d.*	*d.*	*Dollars.*
1833.....	59½	58½	59 5/16	1.297	1868.....	61½	60½	60¼	1.326
1834.....	60½	59½	59 13/16	1.313	1869.....	61	60	60 1/16	1.325
1835.....	60	59½	59 11/16	1.308	1870.....	60½	60½	60 5/16	1.328
1836.....	60½	59½	60	1.315	1871.....	61	60 3/16	60¼	1.326
1837.....	60½	59	59 5/16	1.305	1872.....	61½	59½	60 1/16	1.322
1838.....	60½	59½	59½	1.304	1873.....	59 13/16	57½	59 3/16	1.29769
1839.....	60½	60	60½	1.323	1874.....	59½	57½	58 3/16	1.27883
1840.....	60½	60¼	60¼	1.323	1875.....	57½	55½	56 11/16	1.24233
1841.....	60½	59½	60 1/16	1.316	1876.....	58¼	46½	53½	1.16414
1842.....	60	59½	59 7/16	1.303	1877.....	58½	53½	54 13/16	1.20189
1843.....	59½	59	59 5/16	1.297	1878.....	55½	49½	52½	1.15358
1844.....	59½	59½	59½	1.304	1879.....	53½	48¾	51¼	1.12392
1845.....	59¾	58¾	59¼	1.298	1880.....	52 11/16	51¼	52¼	1.14507
1846.....	60¼	59	59 7/16	1.300	1881.....	52½	50½	51¼	1.13229
1847.....	60½	58½	59 13/16	1.308	1882.....	52½	50	51 11/16	1.13562
1848.....	60	58¼	59¼	1.304	1883.....	51 5/16	50 1/16	50 5/16	1.10874
1849.....	60	59¼	59½	1.309	1884.....	51¼	49¼	50 1/16	1.11068
1850.....	61¼	59¼	61 1/16	1.316	1885.....	50	46½	48 5/16	1.06510
1851.....	61½	60	61	1.337	1886.....	47	42	45¼	.99467
1852.....	61½	59½	60¼	1.326	1887.....	47¼	43½	44 11/16	.97946
1853.....	61½	60¼	61¼	1.348	1888.....	44 7/16	41¼	42½	.93974
1854.....	61½	60½	61¼	1.348	1889.....	44¼	41 13/16	42 11/16	.93511
1855.....	61¼	60	61 5/16	1.344	1890.....	54¼	43¼	47¾	1.04634
1856.....	62½	60¼	61 5/16	1.344	1891.....	48¼	43¼	45 1/16	.98800
1857.....	62¼	61	61½	1.353	1892.....	43¼	37½	39¾	.87145
1858.....	61½	60¼	61 1/16	1.344	1893.....	38¼	30¼	35 5/16	.78030
1859.....	62¼	61¼	62 1/16	1.360	1894.....	31¼	27	28 11/16	.63479
1860.....	62¼	61½	61 13/16	1.352	1895.....	31½	27 3/16	29 13/16	.65406
1861.....	61¼	60½	60 13/16	1.333	1896.....	31 1/16	29¼	30 1/16	.67565
1862.....	62½	61	61 7/16	1.346	1897.....	29 11/16	23¼	27 5/16	.60483
1863.....	61¼	61	61¼	1.345	1898.....	28½	25	26 11/16	.59010
1864.....	62¼	60¼	61¼	1.345	1899.....	29	26¼	27 1/16	.60154
1865.....	61¼	60½	61 1/16	1.338	1900.....	30½	27	28 3/16	.62007
1866.....	62½	60¼	61½	1.339	1901.....	29 7/16	24 11/16	27 3/16	.59595
1867.....	61½	60½	60 15/16	1.328					

XXIV.—Commercial Ratio of Silver to Gold each Year since 1687.

[Report Director of Mint, 1902, p. 170.]

[NOTE.—From 1687 to 1832 the ratios are taken from Dr. A. Soetbeer; from 1833 to 1878 from Pixley and Abell's tables, and from 1879 to 1894 from daily cablegrams from London to the Bureau of the Mint.]

Years.	Ratio.	Years.	Ratio.	Years.	Ratio.	Years.	Ratio.	Years.	Ratio.	Years.	Ratio.
1687...	14.94	1723..	15.20	1759..	14.15	1795..	15.55	1831..	15.72	1867..	15.57
1688...	14.94	1724..	15.11	1760..	14.14	1796..	15.65	1832..	15.73	1868..	15.59
1689...	15.02	1725..	15.11	1761..	14.54	1797..	15.41	1833..	15.93	1869..	15.60
1690...	15.02	1726..	15.15	1762..	15.27	1798..	15.59	1834..	15.73	1870..	15.57
1691...	14.98	1727..	15.24	1763..	14.99	1799..	15.74	1835..	15.80	1871..	15.57
1692...	14.92	1728..	15.11	1764..	14.70	1800..	15.68	1836..	15.72	1872..	15.63
1693...	14.83	1729..	14.92	1765..	14.83	1801..	15.46	1837..	15.83	1873..	15.93
1694...	14.87	1730..	14.81	1766..	14.80	1802..	15.26	1838..	15.85	1874..	16.16
1695...	15.02	1731..	14.94	1767..	14.85	1803..	15.41	1839..	15.62	1875..	16.64
1696...	15.00	1732..	15.09	1768..	14.80	1804..	15.41	1840..	15.62	1876..	17.75
1697...	15.20	1733..	15.18	1769..	14.72	1805..	15.79	1841..	15.70	1877..	17.20
1698...	15.07	1734..	15.39	1770..	14.62	1806..	15.52	1842..	15.87	1878..	17.92
1699...	14.94	1735..	15.41	1771..	14.66	1807..	15.43	1843..	15.93	1879..	18.39
1700...	14.81	1736..	15.18	1772..	14.52	1808..	16.08	1844..	15.85	1880..	18.05
1701...	15.07	1737..	15.02	1773..	14.62	1809..	15.96	1845..	15.92	1881..	18.25
1702...	15.52	1738..	14.91	1774..	14.62	1810..	15.77	1846..	15.90	1882..	18.20
1703...	15.17	1739..	14.91	1775..	14.72	1811..	15.53	1847..	15.80	1883..	18.64
1704...	15.22	1740..	14.94	1776..	14.55	1812..	16.11	1848..	15.85	1884..	18.61
1705...	15.11	1741..	14.92	1777..	14.54	1813..	16.25	1849..	15.78	1885..	19.41
1706...	15.27	1742..	14.85	1778..	14.68	1814..	15.04	1850..	15.70	1886..	20.78
1707...	15.44	1743..	14.85	1779..	14.80	1815..	15.26	1851..	15.46	1887..	21.10
1708...	15.41	1744..	14.87	1780..	14.72	1816..	15.28	1852..	15.59	1888..	22.00
1709...	15.31	1745..	14.98	1781..	14.78	1817..	15.11	1853..	15.33	1889..	22.10
1710...	15.22	1746..	15.13	1782..	14.42	1818..	15.35	1854..	15.33	1890..	19.75
1711...	15.29	1747..	15.26	1783..	14.48	1819..	15.33	1855..	15.38	1891..	20.92
1712...	15.31	1748..	15.11	1784..	14.70	1820..	15.62	1856..	15.38	1892..	23.72
1713...	15.24	1749..	14.80	1785..	14.92	1821..	15.95	1857..	15.27	1893..	26.49
1714...	15.13	1750..	14.55	1786..	14.96	1822..	15.80	1858..	15.38	1894..	32.56
1715...	15.11	1751..	14.39	1787..	14.92	1823..	15.84	1859..	15.19	1895..	31.60
1716...	15.09	1752..	14.54	1788..	14.65	1824..	15.82	1860..	15.29	1896..	30.59
1717...	15.13	1753..	14.54	1789..	14.75	1825..	15.70	1861..	15.50	1897..	34.20
1718...	15.11	1754..	14.48	1790..	15.04	1826..	15.76	1862..	15.35	1898..	35.03
1719...	15.09	1755..	14.68	1791..	15.05	1827..	15.74	1863..	15.37	1899..	34.36
1720...	15.04	1756..	14.94	1792..	15.17	1828..	15.78	1864..	15.37	1900..	33.33
1721...	15.05	1757..	14.87	1793..	15.00	1829..	15.78	1865..	15.44	1901..	34.68
1722...	15.17	1758..	14.85	1794..	15.37	1830..	15.82	1866..	15.43		

APPENDIX F.

XL.—Changes in the values of foreign coins, 1891–1897.

[Report of the Director of the Mint, 1897, pages 205–207.]

Countries.	Monetary unit.	Value 1891.				Value 1892.	
		Jan. 1.	Apr. 1.	July 1.	Oct. 1.	Jan. 1.	Apr. 1.
Austria-Hungary	Silver florin	$0.38,1	$0.36,3	$0.36,3	$0.35,7	$0.34,1	$0.32,8
Bolivia	Silver boliviano	.77,1	.73,5	.73,6	.72,3	.69,1	.66,5
Central American States.	Silver peso	.77,1	.73,5	.73,6	.72,3	.69,1	.66,5
China	Silver tael, Shanghai	1.13,9	1.08,5	1.08,7	1.06,8	1.02,1	.98,2
Do	Silver tael, haikwan	1.27,0	1.20,9	1.21,0	1.18,9	1.13,7	1.09,3
Colombia	Silver peso	.77,1	.73,5	.73,6	.72,3	.69,1	.66,5
Cuba	Gold peso	.92,6	.92,6	.92,6	.92,6	.92,6	.92,6
Ecuador	Silver peso [a]	.77,1	.73,5	.73,3	.72,3	.69,1	.66,5
India	Silver rupee	.36,6	.34,9	.35,0	.34,3	.32,8	.31,6
Japan	Silver yen	.83,1	.79,2	.79,3	.77,9	.74,5	.71,6
Mexico	Silver dollar	.83,7	.80,0	.80,0	.78,5	.75,0	.72,2
Peru	Silver sol	.77,1	.73,5	.73,6	.72,3	.69,1	.66,5
Russia	Silver ruble	.61,7	.58,8	.58,8	.57,8	.55,3	.53,1
Tripoli	Silver mahbub	.69,5	.66,3	.66,4	.65,2	.62,3	.60,0
Venezuela	Gold bolivar	[b].15,4	[b].14,7	[b].14,7	[b].14,5	[b].13,8	[b].13,3

Countries.	Monetary unit.	Value 1892.		Value 1893.			
		July 1.	Oct. 1.	Jan. 1.	Apr. 1.	July 1.	Oct. 1.
Austria-Hungary	Silver florin	$0.32,0	$0.20,3	$0.20,3	$0.20,3	$0.20,3	$0.20,3
Bolivia	Silver boliviano	.64,9	.61,6	.61,3	.61,0	.60,4	.53,1
Central American States.	Silver peso	.64,9	.61,6	.61,3	.61,0	.60,4	.53,1
China	Silver tael, Shanghai	.95,8	.91,0	.90,6	.90,1	.89,2	.78,4
Do	Silver tael, hiakwan	1.06,7	1.01,3	1.01,0	1.00,4	.99,4	.87,4
Colombia	Silver peso	.64,9	.61,6	.61,3	.61,0	.60,4	.53,1
Cuba	Gold peso	.92,6	.92,6	.92,6	.92,6	.92,6	.92,6
Ecuador	Silver peso [a]	.64,9	.61,6	.61,3	.61,0	.60,4	.53,1
India	Silver rupee	.30,8	.29,3	.29,2	.29,0	.28,7	.25,2
Japan	Silver yen	.69,9	.66,4	.66,1	.65,8	.65,1	.57,3
Mexico	Silver dollar	.70,4	.66,9	.66,6	.66,2	.65,6	.57,7
Peru	Silver sol	.64,9	.61,6	.61,3	.61,0	.60,4	.53,1
Russia	Silver ruble	.51,9	.49,2	.49,1	.48,8	.48,3	.42,5
Tripoli	Silver mahbub	.58,5	.55,5	.55,3	.55,0	.54,5	.47,9
Venezuela	Gold bolivar	[b].13,0	[b].12,3	.19,3	.19,3	.19,3	.19,3

[a] Since 1887 called "sucre." [b] Value of the silver bolivar. [c] Value of the gold crown.

XL.—*Changes in the values of foreign coins, 1880–1897*—Continued.

Countries.	Monetary unit.	Value 1894.			
		Jan. 1.	Apr. 1.	July 1.	Oct. 1.
Bolivia	Silver boliviano	$0.51,6	$0.46,5	$0.45,7	$0.46,4
Central American States	Silver peso	.51,6	.46,5	.45,7	.46,4
China	Silver tael, Shanghai	.76,2	.68,6	.67,6	.68,5
Do	Silver tael, haikwan	.84,9	.76,5	.75,3	.76,3
Do	Silver tael, Tientsin				.72,7
Do	Silver tael, Chefoo				.71,7
Colombia	Silver peso	.51,6	.46,5	.45,7	.46,4
Ecuador	Silver peso[a]	.51,6	.46,5	.45,7	.46,4
India	Silver rupee	.24,5	.22,1	.21,7	.22,0
Japan	Silver yen	.55,6	.50,1	.49,3	.50,0
Mexico	Silver dollar	.56,0	.50,5	.49,7	.50,4
Peru	Silver sol	.51,6	.46,5	.45,7	.46,4
Russia	Silver ruble	.41,3	.37,2	.36,6	.37,1
Tripoli	Silver mahbub	.46,5	.41,9	.41,3	.41,8

Countries.	Monetary unit.	Value 1895			
		Jan. 1.	Apr. 1.	July 1.	Oct. 1.
Bolivia	Silver boliviano	$0.45,5	$0.44,1	$0.48,6	$0.48,6
Central American States	Silver peso	.45,5	.44,1	.48,6	.48,6
China	Silver tael, Shanghai	.67,3	.65,2	.71,8	.71,8
Do	Silver tael, haikwan	.74,9	.72,6	.80,0	.80,0
Do	Silver tael, Tientsin	.71,4	.69,2	.76,1	.76,2
Do	Silver tael, Chefoo	.70,4	.68,3	.75,1	.75,2
Colombia	Silver peso	.45,5	.44,1	.48,6	.48,6
Ecuador	Silver peso[a]	.45,5	.44,1	.48,6	.48,6
India	Silver rupee	.21,6	.21,0	.23,1	.23,1
Japan	Silver yen	.49,1	.47,6	.52,4	.52,4
Mexico	Silver dollar	.49,5	.47,9	.52,8	.52,8
Persia	Silver kran		.08,1	.08,9	.09,0
Peru	Silver sol	.45,5	.44,1	.48,6	.48,6
Russia	Silver ruble	.36,4	.35,3	.38,9	.38,9
Tripoli	Silver mahbub	.41,1	.39,8	.43,8	.43,8

[a] Since 1887 called "sucre."

XL.—*Changes in the values of foreign coins, 1880–1897*—Continued.

Countries.	Monetary unit.	Value, 1896.			
		Jan. 1.	Apr. 1.	July 1.	Oct. 1.
Bolivia	Silver boliviano	$0.49,1	$0.49,3	$0.49,7	$0.49,0
Central American States	Silver peso	.49,1	.49,3	.49,7	.49,0
Chile	Gold and silver peso	.91,2	.91,2	.....	.....
Do	Gold peso	.....	.....	.36,5	.36,5
China	Silver tael, Amoy	.....	.....	.80,5	.79,3
Do	Silver tael, Canton	.....	.....	.80,2	.79,0
Do	Silver tael, Chefoo	.75,9	.76,3	.76,9	.75,8
Do	Silver tael, Chin Kiang	.....	.....	.78,6	.77,4
Do	Silver tael, haikwan	.80,8	.81,2	.81,9	.80,6
Do	Silver tael, Hankow	.....	.....	.75,3	.74,2
Do	Silver tael, Hongkong	(a)	(a)	(a)	(a)
Do	Silver tael, Fuchau	.....	.....	.74,4	.73,3
Do	Silver tael, Niuchwang	.....	.....	.75,5	.74,3
Do	Silver tael, Ningpo	.....	.....	.74,4	.76,2
Do	Silver tael, Shanghai	.72,5	.72,9	.73,5	.72,4
Do	Silver tael, Swatow	.....	.....	.74,3	.73,2
Do	Silver tael, Takau	.....	.....	.81,0	.79,8
Do	Silver tael, Tientsin	.76,9	.77,3	.78,0	.76,8
Colombia	Silver peso	.49,1	.49,3	.49,7	.49,0
Ecuador	Silver sucre	.49,1	.49,3	.49,7	.49,0
India	Silver rupee	.23,3	.23,4	.23,6	.23,3
Japan	Silver yen	.52,9	.53,2	.53,6	.52,8
Mexico	Silver dollar	.53,3	.53,6	.54,0	.53,2
Persia	Silver kran	.09,0	.09,1	.09,2	.09,0
Peru	Silver sol	.49,1	.49,3	.49,7	.49,0
Russia	Silver ruble	.39,3	.39,5	.39,8	.39,2
Tripoli	Silver mahbub	.44,3	.44,5	.44,9	.44,2

[a] The "British dollar" has the same legal value as the Mexican dollar in Hongkong, the Straits Settlement, and Labuan.

XL.—*Changes in the values of foreign coins, 1880–1897*—Continued.

Countries.	Monetary unit.	Value, 1897.			
		Jan. 1.	Apr. 1.	July 1.	Oct. 1.
Bolivia	Silver boliviano	$0.47,4	$0.46,8	$0.44,3	$0.41,2
Central American States	Silver peso	.47,4	.46,8	.44,3	.41,2
China	Silver tael, Amoy	.76,7	.75,7	.71,7	.66,6
Do	Silver tael, Canton	.76,5	.75,5	.71,5	.66,4
Do	Silver tael, Chefoo	.73,3	.72,4	.68,6	.63,7
Do	Silver tael, Chin Kiang	.74,9	.73,9	.70,0	.65,1
Do	Silver tael, Fuchau	.70,9	.70,0	.66,3	.61,6
Do	Silver tael, haikwan	.78,0	.77,0	.73,0	.67,8
Do	Silver tael, Hankow	.71,7	.70,8	.67,1	.62,3
Do	Silver tael, Hongkong	(a)	(a)	(a)	(a)
Do	Silver tael, Niuchwang	.71,9	.71,0	.67,2	.62,5
Do	Silver tael, Ningpo	.73,7	.72,8	.68,9	.64,0
Do	Silver tael, Shanghai	.70,0	.69,1	.65,5	.60,8
Do	Silver tael, Swatow	.70,8	.69,9	.66,2	.61,5
Do	Silver tael, Takau	.77,2	.76,2	.72,2	.67,0
Do	Silver tael, Tientsin	.74,3	.73,4	.69,5	.64,6
Colombia	Silver peso	.47,4	.46,8	.44,3	.41,2
Ecuador	Silver sucre	.47,4	.46,8	.44,3	.41,2
India	Silver rupee	.22,5	.22,2	.21,1	.19,6
Japan	Silver yen	.51,1	.50,5	.47,8	.....
Do	Gold yen	.....	.....	.....	.49,8
Mexico	Silver dollar	.51,5	.50,8	.48,2	.44,7
Persia	Silver kran	.08,7	.08,6	.08,2	.07,6
Peru	Silver sol	.47,4	.46,8	.44,3	.41,2
Russia	Silver ruble	.37,9	.37,4	.....	.....

a The "British dollar" has the same legal value as the Mexican dollar in Hongkong, the Straits Settlement, and Labuan.

APPENDIX G.

INDIAN ACTS—ACT NO. XXIII OF 1870.

Passed by the governor-general of India in council. (Received the assent of the governor-general on the 6th of September, 1870.)

AN ACT to consolidate and amend the law relating to coinage and the mint.

* * * * *

12. No gold coin shall be legal tender in payment or on account.

* * * * *

APPENDIX H.

INDIAN ACTS—ACT NO. XX OF 1882.

Passed by the governor-general of India in council. (Received the assent of the governor-general on the 26th of October, 1882.)

AN ACT to amend the law relating to the government paper currency.

* * * * *

11. The head commissioner, the commissioners, and the deputy commissioners shall, in their respective circles of issue, on the demand of any person, issue from the office or offices of issue established in their respective circles, currency notes of the denominations prescribed under this act, in exchange for the amount thereof—

(*a*) in current silver coin of the government of India.

(*b*) * * *

APPENDIX I.

INDIAN ACTS—ACT NO. VIII OF 1893.

AN ACT to amend the Indian coinage act, 1870, and the Indian paper-currency act, 1882.

Whereas it is expedient to amend the Indian coinage act, 1870, and the Indian paper-currency act, 1882, it is hereby enacted as follows:

TITLE AND COMMENCEMENT—XXIII, 1870; XX OF 1882.

1. (1) This act may be called the Indian coinage and paper-currency act, 1893; and

(2) It shall come into force at once.

REPEAL OF EXISTING ENACTMENTS.

2. The enactments specified in the schedule hereto shall be repealed or modified to the extent and in the manner mentioned in the third column thereof, but no such repeal or modification shall affect anything already done or any right or obligation heretofore acquired or undergone under the said enactments or any of them.

Number, year, and short title.	Sections.	Extent of repeal or modifications.
Act XXIII of 1870 (the Indian coinage act, 1870).	19 to 26, both inclusive.	The whole to be repealed.
Act XX of 1882 (the Indian paper-currency act 1882).	11	Clause (*b*), clause (*d*), and the proviso to be repealed.
	12	The word and letter, "clause (*b*)" to be omitted
	13	The words "to an extent to be specified in the order, not exceeding one-fourth of the total amount of issues represented by coin and bullion as provided by this act," to be omitted.
	14 and 15	The whole sections to be repealed.
	21	For the proviso to subsection (1) the following shall be substituted: "*Provided*, That any coin or bullion so received and appropriated may be sold or exchanged for gold or silver coin of the Government of India of the like value, which shall be so appropriated and set apart instead of the coin or bullion sold or exchanged."
		Subsection (2) to be repealed.
	28	Subsection (1), clause (*f*) to be omitted.
		Subsection (3) to be repealed.

APPENDIX J.

INDIAN ACTS—ACT NO. XXII OF 1899.

Passed by the governor-general of India in council.

(Received the assent of the governor-general on the 15th September, 1899.)

AN ACT further to amend the Indian coinage act, 1870, and the Indian paper-currency act, 1882.

Whereas it is expedient further to amend the Indian coinage act, 1870, and the Indian paper-currency act, 1882, it is hereby enacted as follows:

XXIII of 1870, XX of 1882.

1. (1) This act may be called the Indian coinage and paper-currency act, 1899; and

Short title and commencement.

(2) It shall come into force at once.

2. For section 12 of the Indian coinage act, 1870, the following section shall be substituted, namely:

XXIII of 1870.

Substitution of new section for section 12, Act XXIII, 1870.

"12. Gold coins, whether coined at Her Majesty's royal mint in England, or at any mint established in pursuance of a proclamation of Her Majesty as a branch of Her Majesty's royal mint, shall be a legal tender in payment or on account at the rate of fifteen rupees for one sovereign;

Gold coins a legal tender.

"Provided that such coins have not been called in by any proclamation made in pursuance of the coinage act, 1870, or have not lost weight so as to be of less weight than that for the time being prescribed for like coins by or under the said statute as the least current weight."

33 and 34 Vict., c. 10.

3. To section 11, clause (*a*), of the Indian paper-currency act, 1882, the following words and figures shall be added, namely:

Addition to section 11, clause (a), Act XX, 1882.

XX of 1882.

"or in gold coin which is legal tender under the Indian coinage act, 1870."

XXIII of 1870.

[See Report Director of the Mint, 1900, p. 381.]

APPENDIX K.

Revised Statutes, Sec. 2903: The President may cause to be established fit and proper regulations for estimating the duties on merchandise imported into the United States, in respect to which the original cost shall be exhibited in a depreciated currency, issued and circulated under authority of any foreign government.

CUSTOMS REGULATIONS, 1899.

ART. 409. In the assessment of duty, the currency of the invoice must be reduced to the money of account of the United States upon the basis of the values of foreign coins as proclaimed by the Secretary of the Treasury on the first days of January, April, July, and October of each year. The date of the consular certificate will indicate the value of invoice currency.

When the standard value of a foreign coin has not been thus proclaimed, any invoice expressed in such coin must be accompanied by a consular certificate showing its value in standard gold dollars of the United States.

When invoices are made out in a paper currency which has become depreciated the consul is instructed

to certify the relative value of said currency as compared with the standard coin of the country of exportation, the latter being the only currency recognized by the law; and entries of such invoices must be reduced at the values so certified.

O

IN THE

Supreme Court of the United States

OCTOBER TERM, 1904.

THE UNITED STATES,
Petitioner,
vs.
WHITRIDGE, WHITE & CO.

443.

BRIEF OPPOSING PETITION FOR CERTIORARI.

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ALDIS B. BROWNE,
WILLIAM R. SEARS,
Of Counsel.

C. G. Burgevin, Walker and Centre Streets, N. Y.

Supreme Court of the United States,

OCTOBER TERM, 1904.

THE UNITED STATES,
Petitioner,

vs.

MORRIS WHITRIDGE and another.

BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI.

It is submitted and confidently believed that the prayer for a writ in this case should be denied.

The petititioner moves with exceptional length of argument, with many supporting tables of figures, with rare strenuousness. The reasons for this are that this issue has been kept in litigation by the Treasury Department for seven years or more, and during that time has been, as shown in Appendix A (hereto annexed), enlightened with fuller argument and more conclusive judicial decisions than perhaps any other issue, not excepting the famous contention as to hat trimmings, which ever arose under the duty laws. Every one of these decisions, including one from this Court, has sustained the contention now sought to be again reviewed.

I.

There have been twelve decisions on the issue —four by the board of general appraisers (written by Judge Somerville and most carefully considered), four by the several circuit courts, three by the circuit courts of appeal, and as stated, one by this Court.

Collectively, these decisions, all of which are printed as Appendix A of this brief for ready reference, and in the order of their rendition, have repeatedly considered and decided every aspect of the controversy, and their doctrine is supported at every point by sound sense and ample precedent.

After the fifth of these decisions,—that of the circuit court of appeals in the first circuit in Beebe's case, *a petition for certiorari was brought here,* was duly supported and opposed in printed briefs, was carefully considered, doubtless, by this Court, *and was denied. The present petition will be found, on examination, substantially a renewal of the former.* As in all similar instances, the petitioner seeks to avoid the adverse force of the earlier denial by alleging (p. 3, brief) that " the issues now presented are *radically* different" etc. But the facts not only do not bear this out; they prove the contrary. There are certain differences in the manner of stating the case, and some alterations in the line of argument. Thus, *the petition in Beebe's case estimated* (see p. 6) *$5,000,000 as the sum at stake. Petitioner now estimates it* (p. 3, Brief) *as "over $1,000,000."* The signers of this brief, in close touch with all the chief claimants, may offer their view that only a fraction of $1,000,000 is involved.

Again, *the petition in Beebe's case said* (p. 6): " *Under existing conditions the question does not arise,* because later Treasury proclamations give the current and legal value of the rupee, founded upon the metal value, which is now referable in India to the gold standard." Whereas *the present petition urges* (p. 2) *that the case "requires construction of the law now in force,"* etc. Both assertions are true; the law is still in force, but the issue is uncurrent and not at all likely to recur, the free coinage of silver having long been abandoned by the great trading nations.

But *Beebe's case and this one are identical in every important fact,* and differ at only one point in their records. Both involve

imports from India, made after 1894, invoiced in silver rupees, dutiable according to value, duly appraised in the currency of India as the law requires, such currency reduced to United States equivalent *at the exchange value of the rupee* as certified by our consul at the date of shipment, and duty reckoned, under orders of the Secretary of the Treasury, on this value instead of the lesser pure metal value duly ascertained at the Mint and proclaimed by the Secretary as required by law. Against that feature of the assessment protest was directed in both cases, and manifestly, the law of each was the law of the other.

The sole difference in the records is that in Beebe's case, the Government joined in a stipulation of the amply evident fact, that the Secretary's order was based on the exchange value, while in the present case the stipulation was refused, the Government seemingly acting on the theory that, as the approval of the courts could not be secured on the full facts as submitted, *a better result might be had by a partial suppression of the facts.* But as will be shown, this fact is almost absurdly manifest, the record and many official publications bristle with its repetition, and the petitioner in the present prayer fully and repeatedly concedes—nay, asserts it. The alleged difference thus proves to be a distinction without a difference.

II.

Only two questions are vital to this case, viz. 1, what was the Secretary's action? and, 2, What action did the law authorize him to take?

There is no room for serious discussion beyond these two. Despite the petitioner's contentions as to finality of the Secretary's reliquidation order, and that its basis or meaning cannot be inquired into by boards or courts, *he evidently cannot intend or desire to protect an official in transcending the statute.* If unreviewable, the Secretary's action must be so because within his statutory power, and to assert that we must not ascertain what it was, is to deny the right to measure it by that power, and thus is to beg the question.

On the other hand, when examined and thus measured, we concede that if found within the power conferred by the statute, it cannot be reversed, nor any further reviewed.

The nature of the official act, and the nature and extent of the official power—these are the two elements on which this case must turn, and on which it has turned in the courts below.

III.

The Secretary ordered reliquidation of the duties here involved, on the basis of the rupee's exchange value, and in defiance of its proclaimed value.

Petitioner's brief and prayer either concede or state this repeatedly. At page 2, the Government contention is stated as being "that the Secretary of the Treasury, under section 25, tariff act of 1894 * * * had power to order reliquidation of the entry in question at the real, exchange or market value of the rupee of the invoice. * * * The importers insist that, irrespective of the cost to them or its exchange or market value, the rupee could not be estimated higher than the value placed on the silver therein." On page 3: "The Government only seeks * * * to enforce equality irrespective of the money standard of the exporting country."

On page 7 (and foot of page 6): "The proviso in section 25, act of 1894, gave the Secretary the right to direct reliquidation of an entry at the *exchange* value of the money specified in the invoice whenever that was 10 per cent. more or less than the metallic value proclaimed at beginning of the quarter, and such right did not depend on a change in the market value of the metal in the coin." These concessions render almost needless the citation of proofs as to what value the Secretary followed, but in fact the record shows (R., p. 15) that the invoice concerned was accompanied by a consular certificate, declaring that at the date of certification the exchange value of the rupee was 32 cents; (p. 16) that there was appended (although wholly unwarranted by any law) to the Mint Director's estimate as promulgated by the Secretary, the foot-note: "Value of

the rupee to be determined by consular certificate"; (p. 16) that the Collector liquidated the entry on the basis of 32 cents per rupee as certified by the consul, such action being as directed by the Secretary in Treas. Decns. 18110; (pp. 16–17) that there was a later liquidation made, on the basis of 20.7 cents per rupee (the proclaimed value) pursuant to Treas. Decn. 23050; (p. 17) that thereafter the Collector sent the entry and invoice to the Secretary, including, of course, the attached consular certificate, such action being also as directed in Treas. Decn. 23050; and (p. 17) that the Secretary returned these papers with order for a new reliquidation at the consular value of 32 cents per rupee as originally adopted.

The position of the Treasury Department was openly and repeatedly announced in many of its "decisions." Thus in Treas. Decn. 17766, the Department stated that when, on an invoice from India, the consul attached a certificate stating the "demand rate of exchange," such certificate showed the true value of the rupee, and should be followed, *as coming within the closing provision of section 25, act of 1894.* In Decn. 18110 the Department assumed to overrule protests of various importers, where it appeared that in liquidation rupees had been converted into United States currency "at the rate of exchange certified to by the United States consul, which was considerably higher than the proclaimed rate." "The evidence," said the Department, "contained in the certification of the United States consular officer on the invoices submitted with the protests is satisfactory to the Department," and the liquidation was approved "under the authority of section 25 of the act of August 28, 1894." In Decn. 18327 the Treasury directed all Collectors that "so long as the actual exchange value of the rupee of India exceeds by more than 10 per cent. the value proclaimed * * * such actual value (and not the proclaimed value) will be taken in accordance with the provisions of section 25 of the Act of August 28, 1894."

In Decn. 22511, Collectors were instructed to assess duty on the proclaimed value of rupees, only, but "If such proclaimed value is less than that shown by the consular certificates accompanying the invoices, you will report the facts immediately to this Department, so that a reliquidation should one be deemed necessary, may be ordered." Decn. 23050 ordered the like practice to be applied on past entries not over one year old, and that "No refunds are to be made pending the receipt of further instructions from the Department."

It was under this last ruling that the Whitridge entry was at one time reliquidated at 20.7 cents per rupee (p. 16, finding 9, record), and the papers forwarded to the Secretary without any actual refund of the excess. Whereupon, as already shown, he at once returned the papers with a statement exactly in accordance with all these public rulings and his known practice, that " satisfactory evidence had been produced to him that the rupees of the invoice were worth, on the day of certification, 32 cents each "—*the exact price certified by the consul as their exchange value*. And at that value translation and reliquidation were ordered to be made, and were made.

It would manifestly be impossible to contend seriously, in the face of this showing, that the Secretary had found and followed any metal value in his reliquidation order in this case. Nor does the petitioner expand such contention, dwelling in his point 1, rather on the alleged finality of the Secretary's order, *whatever may have been its meaning*. But unquestionably its finality must be determined, as already contended, precisely according to what its meaning was. It would be intolerable to assert " The act may have been meant either this or that ; if this, it might be illegal ; if that, not so. But we defy you to discover *which* it was." This Court has repeatedly looked narrowly into the acts of officials, supposedly taken under statute authority, and on finding that in fact they have exceeded such authority, has held their acts invalid.

Shepley vs. Cowan, 91 U. S., 330.
Morrill vs. Jones, 106 U. S., 466.
Robertson vs. Frank Bros., 132 U. S., 17.
Muser vs. Magone, 155 U. S., 246.
U. S. vs. Passavant, 169 U. S., 16.
Amn. School, etc., vs. McAnulty, 187 U. S., 94.

The petitioner insists (p. 24) that no affirmative evidence or admission proves that the metal value was not followed. We insist that the foregoing résumé embodies unmistakable evidence and official admission of it. And *this record contains complete proof, which the general appraisers duly admitted* (pp. 11–14 record), *and which the Government could not contradict, but objected to any ascertainment of facts*, showing beyond cavil that the value adopted was not the value of the metal in the rupee. The customs administrative act (Sec. 15) prescribes that " all the evidence taken by and before said appraisers shall be competent evidence " before the higher courts. Moreover, the Treasury Department's own publica-

tion entitled "Statistical Abstract of the United States," for 1900, the year of this importation—a public and official document cognizable in every court—reports the entire range of prices of silver during that year, and proves that instead of evidence that the metal value of the rupee was 32 cents, the Secretary had conclusive evidence to the contrary, and officially published it to all the world.

"The letter of the Secretary ordering reliquidation of the entry in the present case," says the petitioner "shows that he intended to follow the proviso in section 25." But this is error; it shows that he intended to follow *his interpretation of* the proviso, and this being demonstrated to be an interpretation which abandoned metal value for exchange value, must be held void unless the statute bears such construction. *Like all other matters involved in this petition, all the foregoing was very fully argued out on the petition in Beebe's case.* It is error on the part of petitioner's counsel to suppose (see petitioner's brief, p. 20) that case, when thus petitioned, was burdened with any stipulation as to facts. That was added at a later stage, and as presented to this Court, the Beebe case was just like the present in this aspect. Nor is counsel warranted in suggesting that the writ was denied because the decision of which review was asked was not final. No such point was raised on either side, but the arguments for and against the writ were squarely on the same proposition as now urged. Thus on this question of finality of the Secretary's order, the Solicitor-General said (pp. 5, 6, Beebe Petition): "Without admitting that the Secretary of the Treasury must order a reliquidation of an entry at the metal value as proclaimed by him, must not the order of reliquidation in the present case, finding 'the correct and true value of the Indian rupee at 32.11 cents' and approving liquidation at that rate under the authority of section 25, be construed as being made within the authority of the statute?"

This point was squarely met, as were all others in the Beebe petition, by the brief of respondents, and as these desired such action by this Court as would pass on the merits of the controversy, no stress whatever was laid on the inconclusive nature of the decree below. This Court therefore disposed, by its denial of the writ then prayed for, of the entire question in all its aspects, and ought not now to be asked again for what it then refused.

As pointed out, the refusal to concede that the Secretary's re-

liquidation order in this case involved a resort to exchange value, is the only difference between *this record* and Beebe's—between the *cases*, there is no difference. What comment, then, will fairly meet petitioner's assertion (p. 3, foot) that "This case has been carefully framed to present, without complication, the Government's exact contention"—and his action, in refusing (although urged by counsel) to ask for a writ in Beebe's case, yet in attacking the validity of its decision on this petition, and suggesting (p. 21) that the decision of the Court of Appeals in the present case follows Beebe's—"without adding anything of importance"?

IV.

The statute in force as to foreign money values—Section 25 of the law of 1894—including its proviso, did not warrant translating the Indian rupee at its exchange value.

For over a century prior to 1894, the unchanging basis for reckoning foreign money values has been *to determine the value of the pure metal therein.* At first by congressional *fiat*, later by the yearly ascertainment of the Mint under statute direction, and still later by quarter-yearly ascertainment,—*but always the value ascertained and followed being the value of the bullion.* And as unchanging has been the rule of this Court that these ascertained bullion values must be followed. In

Arthur vs. Richards, 23 Wall. 246;
Cramer vs. Arthur, 12 Otto, 612;
Padden vs. Merritt, 115 U. S., 25;
U. S. vs. Klingenberg, 153 U. S., 93,

merchants tried to avoid the force of these statutory values, and undeniably showed, in some of the cases, that an equitable adjustment of their duties required such avoidance. But in every case it was held that the statute was clear, its continued purpose uniform, its operation certain, calculable, and just in the long run, and that merchants and collectors alike must meet its terms without deviation.

In Arthur vs. Richards *(supra)* this Court, after pointing out reasons why Congress might wisely announce a value for the pound sterling, based on the pure metal therein, proceeded thus:

> "There were also other reasons, having respect to the "fictitious par of exchange so long persisted in by the "bankers of both countries, which made it expedient for "Congress itself to fix the value of the pound sterling."

So that the precise variance, viz.: between bullion and exchange values,—between intrinsic and fictitious values,—on which the petitioner now cries out as menacing dire results unless the Secretary be permitted to adopt the fictitious (mistermed the "true" value in the brief), was discussed and disposed of to opposite effect by this Court, so long ago as 1875.

In the Hadden and Klingenberg cases *(supra)*, as petitioner admits (brief, p. 26) "the importer was required to pay excessive charges." In other words the merchants in those instances suffered precisely the hardships which it is alleged the Treasury suffered in this, and every cry as to undervaluation, violation of treaties, etc., which the Treasury now makes, was in its reverse aspect as forcibly in their mouths then. *But this Court said, they must accept the value determined according to statute.* It is indeed so evident that prior to 1894 the system of valuing foreign currencies had been an unchanging one of adherence to their bullion values, that the petitioner recognizes his chances as depending wholly on the theory that the proviso to the Act of 1894 intended, and enacted, a complete departure from this time-honored system, repeatedly endorsed by this Court as just to all parties. Conceding, as he must, that there had been a gradual and conservative progress in the statutes, as to method only, from occasional declarations of bullion values by Congress to annual ones by the Secretary, based on actual ascertainment at the Mint, and from annual to similar quarterly ones, *but never departing a hairsbreadth from bullion values,* he is nevertheless compelled to contend that the new proviso, attached in 1894 to the otherwise literal re-enactment of an earlier law, meant substantially to nullify that entire system, and substitute exactly the fluctuating, uncertain measure of foreign money values of which this Court said, in Cramer vs. Arthur *(supra)*.

> "Parties cannot go behind the proclamation, any more "than they would have been permitted to go behind the

> " statute, for the purpose of proving, by parol or by financial " quotations in gazettes, that its valuations are inaccurate. " * * * Importers and collectors must abide by the rule " as proclaimed. It would be a constant source of confusion " and uncertainty if every importer could, on every invoice " raise the question of the value of foreign moneys and " coins."

And, again:

> " It is of the utmost consequence to the Government, and " is, on the whole, most beneficial to importers, that the " value of foreign moneys should be officially ascertained, " and that they should be fixed by a uniform method or " rule."

But it seems amply certain, even were there not a half-score or so of uniform decisions to that effect—that the proviso to Section 25 meant or enacted no such change. For:

1. Provisos are not chosen as the vehicles for radical new systems. Their established function is to create limited exceptions to the generality of the law to which they are annexed.

2. There is no reason whatever to suppose Congress desired, in 1894, to abandon the time-honored basis of pure metal values for foreign coins.

3. Had Congress intended to substitute exchange for bullion values, it certainly would not have gone about it by re-enacting the law of 1890 intact, and adding a proviso whose effect would be to expunge it wholly or largely.

4. Nor is it reasonable to suppose that while re-enacting the former law, Congress would endow the Secretary with any such dangerous or arbitrary power as to override it whenever he saw fit.

5. Analysis of the very words of the proviso proves it open to no such construction as the petitioner asks for.

6. The valuation to be put on foreign moneys has no legal connection with appraisement of imports.

1. *The established rule as to provisos.*

Since the earliest reports, a proviso has been recognized by this Court as something reasonably qualifying, and hence engrafted upon

a statute, rather than a thing intended to effect a radical departure therefrom. In

Minis vs. U. S., 15 Pet., 423,

Mr. Justice STORY said (at p. 445):

> "It would be somewhat unusual to find engrafted upon "an act making special and temporary appropriation, any "provision which was to have a general or permanent appli- "cation to all future appropriations. * * * The office "of a proviso, generally, is either to except something from "the enacting clause or to restrain or qualify its generality, "or to exclude some possible ground of misinterpretation of "it," etc.

In United States vs. Dixon, 15 Pet., 141,

the same eminent authority said:

> "Where the enacting clause is general in its language and "objects, and a proviso is afterwards introduced, that pro- "viso is construed strictly, and takes no case out of the en- "acting clause which does not fall fairly within its terms."

Yet the petitioner asks this Court to assume that Congress, in 1894, re-enacted the old system for pure metal valuations, and then by this obscure proviso authorized the Secretary, whenever such value was found to vary 10 per cent. from the exchange value, to abandon that and adopt this, wholly discredited though it was by many decisions, as arbitrary, fictitious and enabling no man to know where he stood. And, moreover, that it authorizes him to adopt exchange values on one and metal values on another invoice precisely parallel, at his will and without stating his reasons. Could any theory of statutory intent be more repugnant to good sense and good conscience, as well as to established tenets of statute construction!

2. *There was no occasion why Congress should, in 1894, abandon pure metal valuations, as to Indian or any other foreign money.*

The most prolonged effort of petitioner's brief is to demonstrate that the Indian coinage situation, of 1890 to 1894, was such that Congress must be supposed to have aimed at a cure, in the proviso to section 25, for evils which it induced.

When, however, we recall that neither this Act, nor its section 25, nor even the proviso thereto, was adopted with any special reference to India, the importance of the alleged history of the rupee coinage (for none of this is in proof, nor cited from any authoritative publication, but merely asserted by counsel) becomes extremely slight.

But even as stated therein, the facts adduced in the brief are not impressive. On July 1, 1894, the bullion value of the rupee was 21.7 cents. and its exchange value 26.1 cents. *Here was no greater variance than had existed at or after 1890 in the bullion value itself, between one ascertainment and the next.* In August 1893 the act was passed. Hence it was full as likely to provide for taking up, on proof, the varying value of silver, as the variance between silver and exchange. Either plan would be new, but one would be revolutionary, and confide an unusually broad power to an executive official, while the other would be a reasonable amendment and improvement on the established system, wholly in line therewith. And one would involve a distortion of statutory principles in view of conditions in a single country (unimportant in trade with ours), while the other would apply to conditions as they varied from a common cause throughout the world.

The petitioner suggests (p. 3) that in an act "to raise revenue," it must be presumed that Congress had flung overboard the whole usage as to pure metal values, so as to grasp the extra revenue to be derived from a resort to the fictitiously high exchange value of Indian rupees. But Congress was not enacting, as the petitioner would have this Court suppose, a law "whose express purpose was to provide revenue," but one "to reduce taxation, to provide revenue for the Government, and for other purposes" (See the title to the Act of 1894). Here again we find that desire to profit by expurgated statement, which is so notable in the attitude of the Treasury throughout this case.

Reasoning from the course of exchange in India from 1890 onward, the petitioner seeks to support the argument that the latest decision of the circuit court of appeals in Beebe's case (which however, he does not seek to bring here for review by writ) was rendered on a complete misapprehension. He thinks Judge PUTNAM erred in asserting that the great excess of exchange over pure metal value of rupees, shown in Beebe's case, "did not exist when the act of 1894 was passed, and it could not have been in contemplation of Congress."

But this also is clearly fallacious. By petitioner's own figures we see that an excess of 4.4 cents in July, 1894, had grown to one of 12 cents in 1898. Thus we must note that Judge PUTNAM's comment was exactly warranted, and unless Congress can be credited with a prophetic vision over the four intervening years, it is evident that it must, in 1894, have contemplated the day-to-day fluctuations of bullion, and by its enactment, proceeded to take proper measures to meet them.

It is fair to add that even the extreme variation of 12 cents between the real and the fictitious value of the rupee was not beyond the range of past occurrences. In Cramer's case *(supra)* the difference was between 40 and 47 cents per florin, and in Hedden's case there would seem to have been a difference of 17 cents on every Mexican dollar. These variations were not large enough to make Congress abandon or modify the pure metal basis.

3. *Congress would not have gone to work as it did, in the Act of 1894, had its intention been as petitioner alleges.*

Manifestly, if the legislative intent had been to depart from bullion values, the way to accomplish it would not have been by re-enacting bullion values.

Petitioner cannot mean to urge on this Court that Congress intended to embody one valuation for India and a different one for all other countries. Whatever basis was to apply to one must apply to all. "Exchange values in certain countries are varying too widely from bullion values, hence, where they do vary widely, they must be taken in lieu of bullion values"—such is the view which petitioner commends to the Court as being that of Congress. To give effect to this view, we are asked to believe that Congress deliberately renewed the pure metal value system, and then resorted to this proviso to undo it again, instead of enacting that the exchange or legal tender value of foreign moneys should be adopted in reckoning duties—thus giving this as a right to all, instead of making the choice of basis optional with the Secretary of the Treasury.

4. *This option said to have been given to the Secretary would be both unusual and dangerous.*

Throughout all the statutes and decisions as to foreign money values, *while computation was always left to executive officials, Con-*

gress never yet gave them power to choose the basis, as the petitioner thinks was done in 1894.

Such officials have a dangerous tendency to assume power and to exceed their powers. Congress has not favored it, and the courts have repeatedly corrected and rebuked it.

Christy vs. Unwin, 3 Per. Dav., 208.
Galpin vs. Page, 18 Wall., 350.
Marriott vs. Brune, 9 How., 634.
Greeley vs. Thompson, 10 How., 225.
Downs vs. U. S., 187 U. S., 496, and cases cited under point III. thereof.

No principle is more cherished by this Court, or more clearly and oft asserted in the above cases, than that the evidence on which men are taxed, or their rights restricted, must be reviewable in the tribunals of law.

The history of the present issue shows forcibly the need of such safeguards, and that the Treasury officials have repeatedly exceeded their powers duly conferred by law. Thus:

A. The Mint Director, empowered by Congress merely to ascertain the metal values of foreign moneys, went wholly beyond his power when, in the foot-note to his table of metal values, he suggested the ignoring of these, which Congress had ordered should be followed.

B. The Secretary of the Treasury transcended his powers when, by the circulars above quoted, he ordered that all duties on Indian goods be calculated according to exchange values as certified by our consuls. Be it remembered that at first he did not even trouble to "order reliquidation," but asserted that the proviso to section 25 warranted an order given prospectively, as to all entries.

C. The Secretary again transcended his powers when (Treas. Decn. 17766) he ordered that protests against such exactions should not be submitted to the general appraisers, as section 14 of the act of June, 1890, directs that they shall, but should be forwarded to him.

D. Again he exceeded his power when (Treas. Decn. 18110) he proceeded to decide such protests adversely, against the specific provision of the same law, that the general appraisers shall decide them.

Pursuant to this surprising policy, the petitioner asks this Court to perceive error in the many rulings already made upon this issue, because they scrutinized the Secretary's actions, and

thereupon found them illegal. Is an official who has made this record, a proper depositary of the vast power of deciding when the conditions warrant him in repudiating the standard of value adopted by Congress, and adopting such other as he sees fit? And that, without any right of review?

Yet the petitioner *naively* propounds (pp. 21 and 24) the problem: since the Secretary's decisions under the currency value statutes have so often been held conclusive, why not also his decision under the proviso?

The manifest answer is, that if "under" the currency laws he had assumed to determine for himself the scope of his power thereunder, and had determined it wrongly, his decision would not have been conclusive: *it is because he has not acted "under" the proviso at all* that he is reviewable now.

5. *The very words of the proviso clearly negative any such intent or effect as the petitioner contends for.*

The body of section 25 literally requires an ascertainment and promulgation of pure metal values. The proviso enacts that when the Secretary is satisfied that "the value * * * of the money specified in the invoice was * * * ten per cent. more or less than the value proclaimed," etc., he may order reliquidation.

Ten per cent. more or less than the value of **what?** Is the Secretary free to order reliquidation at some fictitious value of the rupee of India, if he is satisfied that such value is ten per cent. more than the last-proclaimed metal value of the yen of Japan? Of course not. The value of the *thing proclaimed* must be found changed. Such is the only reasonable or even tolerable reading of the proviso. *And as the thing proclaimed is, and must be, metal value, the thing found variant must be metal value.*

So that the very words of the law enforce the reasonable theory as to what Congress would intend by an enactment on the subject, at the time, in the form, and with the surrounding conditions and past history of this one, and the petitioner's belief that he, but not the importer, is at least freed from the hard, unchanging rule of bullion values, appears as a mere chimera, based on a plain distortion of the natural sense which the law carries.

6. *But the petitioner insists that a construction must be adopted which will free the Government's hands from adherence to bullion values, in order to avoid undervaluations, violation of treaties, etc.*

As already mentioned, the importance of equal valuations for duty purposes, seems not to have impressed the Treasury deeply when, in Hadden's and Cramer's cases, these importers were compelled to pay duty on much more than the actual cost of their goods. Nor was it apparently feared, then, that the application of pure metal valuations on florins or Mexican dollars would gravely complicate our treaty relations. It seems to make a wide difference, whether the collection of excess revenue or a diminution of duties is concomitant.

As a matter of fact, the appraisement of imports for duty purposes is a step wholly separate and distinct from the translation of foreign currency values. Appraisement is directed by law to determine "the actual market value and wholesale price of the merchandise * * * in the principal markets of the country whence the same has been imported." It is thus necessarily an appraisement *in the currency of those markets*, and the law directs that invoices be made in such currency (Sec. 2, Act of June 10, 1890). The goods herein concerned were completely appraised (their invoice value being found correct) before the translation of the rupees was undertaken at all. The latter was a detail merely of computation, to be performed by the Collector.

This principle was fully recognized in the rulings of this Court in the Hadden, Cramer, and other cases above cited. And while perhaps enough has been said about equality, it may be well to point out that such equality as the petitioner thinks this case infringes, is wholly unattainable, and is infringed daily and hourly in every custom house. Until we are able to impose a level price upon the markets of every foreign country, goods can be bought cheaper in one than in another. And when those goods arrive here, our law directs that they be appraised at *market value in the country of exportation*. Thus, in the sense deemed dangerous by the petitioner, treaties are violated whenever a merchant imports—and pays an *ad valorem* duty on—woollens from England at slightly lower prices than similar goods cost in France, or whenever some proprietary chemical, like phenacetin, is brought from Switzerland, where patent monopolies do not thrive, at a price far below its cost in Germany, where patents protect its proprietors against competition.

This Court has determined, in

"The Cherokee Tobacco," 11 Wall., 616,

that no treaty can obstruct the operation of a law afterward enacted by Congress. Nor would there, in any aspect, be violation of our

treaties with other nations, in refunding duties held by the courts to have been taken without warrant of law.

We believe that every aspect of the petition herein has now been considered and fairly answered. *They were all answered, except the fallacious argument based on the history of rupee coinage—when this same issue was sought to be brought up by certiorari in 1901.* Hence this brief is largely a restatement of what was admirably stated by the counsel for Beebe in their brief then filed, and the Court is urged to secure from its archives, and to examine, the two briefs on which the prayer then denied was submitted.

V.

The writ prayed for in this case should be denied.

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APPENDIX A.

THE DECISIONS AS TO THE VALUATION OF RUPEES.

1.

The General Appraisers' decision in Newhall's case was not published, but is discussed in

2.

The U. S. Circuit Court in Newhall's case (91 Fed. Rep., 525—January 7, 1899).

COLT, Circuit Judge. This is a petition for a review of the decision of the Board of General Appraisers upon a protest of the importers relating to the amount of duties growing out of the conversion to American money of the silver rupee, in the case of an invoice of 25 bales of tanned sheepskins imported into the port of Boston from Madras, India. In reducing the appraised value of the merchandise to American money, the Collector adopted the rate of $.285 per rupee, which was the exchange rate as certified in the consular certificate accompanying the invoice. At the date of the Consul's certificate, the value of the rupee, for the purpose of liquidating duties, as estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury, was $.233. The Board of General Appraisers reversed the decision of the Collector, and directed him to reliquidate the duties on the basis of the proclaimed value.

The question presented is whether, under the law, in reducing foreign standard coin to United States currency, the value shall be that of the pure metal of such coin, as proclaimed by the Secretary of the Treasury, or shall be its exchange value.

In the table of estimate of the value of foreign standard coins issued by the Director of the Mint for the quarter beginning January 1, 1896, we find :

Country.	Standard.	Monetary unit.
India.	Silver.	Rupee.
Value in terms of U. S. gold dollar. .233.		Coins. Gold : mohur. ($7.10.5) Silver : rupee and divisions."

Accompanying this table the Secretary of the Treasury issued the following :

WASHINGTON, D. C., January 1, 1896.

" The foregoing estimate, by the Director of the Mint, of the value of foreign coins, I hereby proclaim to be the value of such coins in terms of the money of account of the United States, to be followed in estimating the value of all foreign merchandise exported to the United States on or after January 1, 1896, expressed in any of such metallic currencies."

Attached to the invoice was this consular certificate dated January 11, 1896 :

" Certified that the demand rate of exchange on London this day is $^{1}/_{1}$ $^{31}/_{32}$ per rupee, and that the New York demand rate of exchange on London as quoted by Reuter on 10 inst. is 4.89 per pound sterling ; the value, therefore, in American gold, of the goods referred to in certified invoice No. 17, is as follows :

Rs. 12076.9.0 at $^{1}/_{1}$ $^{31}/_{32}$—£702.17.10.
£702.17.10 at 4.89 —$3,437.15."

According to this certificate, the value of the silver rupee, in terms of the gold dollar of the United States, is .285.

In expressing in United States money the value of foreign standard coins, it has always been the sound policy of the government to take the intrinsic or pure metal value of such coins. Both the importer and government recognized that it was important to have a fixed and permanent value, though such value might be only approximately true, rather than a fluctuating value, based upon financial quotations in gazettes, trade conditions, or rates of exchange, which would necessarily result in uncertainty, confusion, and interminable litigation.

The first tariff act was enacted July 4, 1789 (1 Stat. 24). On July 31, 1789 (1 Stat. 29), an act was passed to regulate the collection of duties, and section 18 provided that the pound sterling of Great Britain and the coins of other countries designated shall be estimated at the rates specified, "and all other denominations of money in value as near as may be to the said rates."

The acts of August 4, 1790 (1 Stat. 167), and of March 2, 1799 (1 Stat., 627), contained similar provisions. The latter act (section 61) declares :

"And all other denominations of money, in value, as nearly as may be to the said rates, or the intrinsic value thereof, compared with money of the United States."

It also contained the following proviso :

"Provided, that it shall be lawful for the President of the United States, to cause to be established fit and proper regulations for estimating the duties on goods, wares and merchandise imported into the United States, in respect to which the original cost shall be exhibited in a depreciated currency, issued and circulated under authority of any foreign government."

From 1799 to 1873 there were various acts specifying the value of additional foreign coins, or changing the rate previously established. Previous to 1873 there were three methods of estimating foreign currencies for assessment of duties : (1) For most foreign standard coins, specified rates prescribed by statute ; (2) for coins not specifically enumerated in the statute, valuations "as near as may be" to the specified rates or "intrinsic value" ; (3) for depreciated currencies issued and circulated under the authority of foreign governments, such valuations as the President might establish by regulations.

By the act of March 3, 1873 (17 Stat. 602 ; Rev. St. § 3564), instead of separate enactments for each coin, there was substituted a general law, as follows :

"That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value ; and the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the Director of the Mint, and be proclaimed on the first day of January by the Secretary of the Treasury."

This act was amended October 1, 1890 (26 Stat. 624), by requiring the estimate by the Director of the Mint and the proclama-

tion by the Secretary to be made quarterly instead of annually. Under this act, the value of foreign standard coins "shall be that of the pure metal," and such value as estimated by the Director of the Mint, and proclaimed by the Secretary of the Treasury, has the force of a statute. Collector v. Richards, 23 Wall. 246; Cramer v. Arthur, 102 U. S. 612; Hadden v. Merritt, 115 U. S. 25, 5 Sup. Ct. 1169; U. S. v. Klingenberg, 153 U. S. 93, 14 Sup. Ct. 790.

In Collector v. Richards (pages 257, 259), Mr. Justice BRADLEY, speaking for the court, said:

"The plain meaning of this language [of act of 1873] is that the value of foreign coins, in United States money, shall be measured by the amount of pure metal contained therein when of standard value; that is, when of the weight and fineness required by the laws and regulations of the country where they are produced. * * * The true method of comparing their money of account with ours, when both are based on actual coin, is to compare the standard coins of the two countries in a perfect state, and to ascertain the actual amount of pure metal in each. This is the result at which Congress seems to have arrived, and, as we think, wisely."

In Cramer v. Arthur (pages 619, 620), the same eminent Judge said, in the opinion of the court:

"The plaintiff seeks to go behind this valuation, and to show that, at the time of the purchase of the goods, the value of the silver florin in Vienna, as quoted in the papers, and as exhibited by the actual rate of exchange, was less than $47^{60}/_{100}$ cents, namely, $45^{46}/_{100}$ cents, and that the value of the paper florin was $43^{71}/_{100}$ cents. This, we think, the plaintiff cannot be allowed to do. The proclamation of the Secretary and the certificate of the Consul must be regarded as conclusive. In the estimation of the value of foreign moneys for the purpose of assessing duties, there must be an end to controversy somewhere. When Congress fixes the value by a general statute, parties must abide by that. When it fixes the value through the agency of official instrumentalities, devised for the purpose of making a nearer approximation to the actual state of things, they must abide by the value so ascertained. If the currency is a standard one, based on coin, the Secretary's proclamation fixes it; if it is a depreciated currency, the parties may have the benefit of a consular certificate. To go behind these, and allow an examination by affidavits in every case, would put the assessment of duties at sea. It would create utter confusion and uncertainty. * * * It is of the utmost consequence to the government, and it is, on the whole, most beneficial to importers, that the value of foreign moneys should be officially ascertained, and that they should be fixed by a uniform method or rule."

In Hadden v. Merritt the court (115 U. S. 27, 5 Sup. Ct. 1170) said:

"The value of foreign coins, as ascertained by the estimate of the Director of the Mint and proclaimed by the Secretary of the Treasury, is conclusive upon custom-house officers and importers. * * * There is no value, and can be none, in such coins, except as thus ascertained."

From the origin of the government down to the passage of section 25 of the tariff act of August 27, 1894 (28 Stat. 552), the value of foreign standard coins, for the purpose of liquidating duties, was based upon their intrinsic or pure metal value, as expressed in the money of account of the United States. The method adopted previous to 1873 was by special enactment fixing the value as to certain specified coins, and by treasury regulations as to nonenumerated coins to ascertain "as near as may be" the intrinsic value, and since 1873 by estimate of the Director of the Mint, and proclaimed by the Secretary of the Treasury. The only exception was in the case of a depreciated currency issued and circulated under authority of any foreign government, which, by the act of 1799 (now section 2903 of the Revised Statutes), was subject to regulations established by the President. As to depreciated currency, it was early directed by the President that the consular certificates of value annexed to the invoices should govern.

Section 25 of the tariff act of 1894 reads as follows:

"That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint, and be proclaimed by the Secretary of the Treasury immediately after the passage of this act and thereafter quarterly on the first day of January, April, July, and October in each year. And the values so proclaimed shall be followed in estimating the value of all foreign merchandise exported to the United States during the quarter for which the value is proclaimed, and the date of the consular certification of any invoice shall, for the purposes of this section, be considered the date of exportation: provided, that the Secretary of the Treasury may order the reliquidation of any entry at a different value, whenever satisfactory evidence shall be produced to him showing that the value in United States currency of the foreign money specified in the invoice was, at the date of certification, at least 10 per centum more or less than the value proclaimed during the quarter in which the consular certification occurred."

This section, until we reach the proviso, is substantially a re-enactment of the previous law. The contention of the government rests upon the proposition that the word "value" in the proviso is not limited to the value "of the pure metal," but extends to other methods of valuation never before adopted with respect to specified foreign standard coins. To adopt this construction is to hold that Congress intended to depart from the long-established rule, and to introduce a new and uncertain mode of valuation of cases coming within the terms of the proviso. The result is that the body of the section provides one way, and one way only, for estimating the value of foreign standard coins, while the proviso covers other ways in conflict with former well-settled principles. Certainly the court should not adopt such a construction, if it be at all doubtful. To hold that, where the value of the foreign coin during the quarter varies less than 10 per centum from the value proclaimed, the pure metal value is to govern, and that when it exceeds 10 per centum the Secretary of the Treasury may adopt any standard of valuation he sees fit, based upon rate of exchange, trade conditions, or financial reports, would result in the introduction of those elements of uncertainty and confusion which the law has aimed especially to prevent. The purpose of the proviso, in our opinion, was not to change the principle in estimating the value of foreign coins, but rather to permit of a different estimate on the same principle, if it should appear at any time during the quarter that the proclaimed value was to a considerable degree at variance with the actual fact existing at the time of any given importation. While the standard of valuation should be fixed and based on intrinsic value, the whole legislation on the subject shows an effort on the part of Congress to provide speedier means for correcting the valuation when it is shown to be wrong. Until 1873 any change in the valuation of specified foreign standard coin required a special enactment. By the statute of 1873 the proclaimed estimate must be made annually. By the statute of 1890 it must be promulgated quarterly. The proviso, in section 25 of the act of 1894, was simply another step in the same direction, and was intended to permit a new estimate of valuation at any time during the quarter where there was found to be an error of at least 10 per centum. This is the natural construction and evident intent of the whole section, and is in harmony with previous legislation. The proviso must be considered in connection with the body of the section and the subject-matter to which it relates. Under a familiar principle of statutory construc-

tion, a proviso is to be strictly construed, and it "takes no case out of the enacting clause which does not fall fairly within its terms." U. S. v. Dickson, 15 Pet. 141, 165. This proviso has reference to the subject-matter treated in the body of the section, and any broad construction of the word "value," which should enlarge its scope as therein defined, would be doing violence to every sound rule of statutory construction, and is contrary to the general context of the proviso itself, taken as a whole and in connection with what precedes. It would introduce confusion and inconsistency into a statute which is otherwise plain and intelligible.

In this case the value of the rupee, as estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury, was fixed at $.233 for the quarter beginning January 1, 1896. The date of the consular certificate attached to the invoice was January 11, 1896, and the value of the rupee in exchange, as therein certified, was equal to $.285. This represents an appreciation of 23 per cent. over the proclaimed value, and therefore comes within the terms of the proviso; and the Collector was right in the action he took if the word "value" in the proviso should be construed to mean value in exchange, or any other standard of value except that "of the pure metal." We hold that the proviso must be limited to the subject-matter treated in the body of the section, and therefore that it is only applicable to those cases where "satisfactory evidence" is produced that the value of the pure metal of such foreign coin has either appreciated or declined 10 per cent. as compared with its proclaimed value. As there is no evidence on this point in this case, the proclaimed value must stand, and the Collector should have liquidated the duties on that basis.

We understand, from the brief of counsel and the later instructions of the Treasury Department, that the government relies mainly on the proviso in section 25 for justification of the Collector's action. In two letters, however, to the Collector, bearing date, respectively, May 12, and June 17, 1896, in reply to an inquiry for instructions, the Secretary of the Treasury says that the rupee must be regarded as a depreciated currency, upon the ground, apparently, that its nominal value, as he states, is $.444, and that, therefore, entries of merchandise covered by invoices made out in such currency should be liquidated at the value certified by the Consul. There seems to be nothing in the facts of the case which warrant the treatment of the silver rupee at the time of this importation as a depreciated currency, under the law. The provision respecting

depreciated currency first appears in the proviso of the sixty-first section of the act of 1799. "This proviso has always continued in force, and now constitutes section 2903 of the Revised Statutes." Cramer v. Arthur, 102 U. S. 612, 617. Speaking of this proviso, Mr. Justice BRADLEY said (page 618), in that case :

"It was passed at a time when the nations of Europe were at war and the United States were neutral. In England and France, and perhaps other countries, specie payments had been suspended, and currencies based on government credit had been adopted. The law seems to have had in view artificial money of this kind ; a depreciated currency, not based on specie, but still 'issued and circulated under authority of the government.' "

The President, acting through the Secretary of the Treasury, has established regulations on the subject. The treasury regulations (Ed. 1874, art. 993, as amended by circular, S. S. 1870) were as follows :

"FIRST. Where the standard value of a foreign currency has been proclaimed by the Secretary of the Treasury in the manner provided by law, or, not having been so proclaimed, has been fixed by special enactment, that value is to be taken in all cases in estimating customs duties, unless Collectors have been otherwise instructed, or unless a depreciation of the value of the foreign currency expressed in an invoice from the standard of that currency shall be shown by consular certificate thereto attached. Secondly. Where the standard value of a foreign currency has not been proclaimed by the Secretary of the Treasury, in the manner provided by law, an invoice expressed in such currency must be accompanied by a consular certificate, showing its value in standard gold dollars of the United States."

In 1891 the provision was amended as to depreciated currency (S. S. 11,661) so as to read :

"If that currency be depreciated, each copy of the invoice should be accompanied by a consular certificate (Form No. 144) stating the percentage of depreciation of the currency actually paid as compared with the corresponding standard coin currency, and the value in such standard coin currency of the total amount of the depreciated currency paid for the merchandise mentioned in the invoice."

Form No. 144 is as follows :

"I, ---- ---, Consul of the U. S. of America, do hereby certify that the true value of the currency of the -------- of --------, in which currency the annexed invoice of merchandise is made out, is

---------- per cent. as compared with the corresponding standard coin currency, and that the value in such standard coin currency of the total amount of the currency actually paid for the merchandise is ----------."

In this case the consular certificate was not in the form required for a depreciated currency. So far as appears, the rupee was not treated as a depreciated currency coming under the regulations of the President, as provided in section 2903, and which calls for a particular form of consular certificate. On the contrary, on January 1, 1896, the value of the silver rupee in money of the United States was fixed, for the three months following, by estimate of the Director of the Mint, and so proclaimed by the Secretary of the Treasury, as provided in section 25 of the act of August 27, 1894. There is no evidence in this record that at the date of the importation the silver rupee was other than a foreign standard coin of India, and so coming under section 25. To say that a currency was depreciated when its value, as certified by consular certificate, was more than 20 per cent. greater than its proclaimed value, would seem an unwarranted construction of section 2903, as it has always been interpreted.

The second question raised by the government under the assignment of errors is that the Board of General Appraisers had no jurisdiction to review the action of the Collector in estimating the value in United States money of foreign coin. This case is not one of disputed appraisement of the value of imported merchandise, as to which the decision of the Board of General Appraisers is made final under section 13 of the customs administrative act of June 10, 1890. U. S. v. Klingenberg, 153 U. S. 93, 102, 14 Sup. Ct. 790; Hilton v. Merritt, 110 U. S. 97, 3 Sup. Ct. 548. The dutiable value in rupees of the merchandise in this case is admitted under the agreed statement of facts; the only issue being whether this court or the Board of General Appraisers has jurisdiction to review the action of the Collector in reducing to United States currency the value of the rupees. Such jurisdiction, if any, must be found in sections 14 and 15 of the act of June 10, 1890. The jurisdiction conferred upon the circuit court by section 15 is co-extensive with the jurisdiction conferred on the Board of General Appraisers by section 14. This was so held by the supreme court in the Klingenberg Case, 153 U. S. 93, 14 Sup. Ct. 790, in the following words:

"The subjects of review by the circuit court, provided for by section 15, extend to all questions of law and fact in respect to

which the Board of General Appraisers have appellate jurisdiction, except the decision of that board as to the dutiable value of merchandise, which is provided for by section 13, and is made conclusive against all parties interested."

In construing section 14, the court says :

" By section 14 the Collector's decision on rate and amount of duties, including all dutiable costs and charges, and as to all fees and exactions of whatever character (except duties on tonnage), may be the subject of appeal to the Board of General Appraisers."

The Klingenberg Case decided that where the Collector was simply called upon, under the statute, to follow the estimate of value made by the Director of the Mint, and proclaimed by the Secretary of the Treasury, his action was not subject to review by the Board of General Appraisers. If, for example, in the present case, the Collector had adopted the proclaimed rate for the rupee on January 1, 1896, of $.233, his decision would have been final. This conclusion of the court was based upon the rule laid down in Collector v. Richards, Cramer v. Arthur, and Hadden v. Merritt, *ubi supra.* These authorities show the absolute conclusiveness of the value estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury of the standard coin of foreign countries. After holding that the Collector's construction of the value as proclaimed was correct, the court said :

" This being the proper construction to be placed upon the proclamation of July 1, 1892, we are of opinion that the Collector's action in adopting the value of the gold florin at the estimate fixed therein was not subject to review by the Board of General Appraisers, under the principle laid down in the authorities already referred to."

All the Klingenberg Case decided was that when the Collector followed such proclaimed value his action was not the subject of appeal, under section 14. The present case is the reverse, for here the Collector refused to be governed by the proclaimed value.

As was said by the circuit court of appeals for the Second circuit, speaking through Judge SHIPMAN, in the case of Wood v. U. S. (1896) 18 C. C. A. 553, 72 Fed. 254, in which the question arose whether the Collector should liquidate the duties according to the value of the silver ruble proclaimed October 1, 1891, or according to the value proclaimed January 1, 1892 :

"In the Klingenberg Case the Collector was simply called upon by the statute to follow the estimate made by the Director of the Mint, and proclaimed by the Secretary of the Treasury, and his action was not the subject of reversal. In this case the Collector was compelled to construe the statutes, and determine which proclamation he should observe. The Klingenberg Case is not an authority in favor of the proposition that an act of the Collector in regard to valuation of foreign coins which is or which may be in violation of the statutes cannot be the subject of review or of reversal by the Board of General Appraisers. On the contrary, the opinion asserts that, by section 14 of the customs administrative act of June 10, 1890, 'if the decision of the Collector imposes an excessive amount of duties, under an improper construction of the law, the importer may take an appeal to the Board of General Appraisers, whose decision on such questions is not made conclusive, as it is in respect to the dutiable value of the merchandise, and, not being conclusive, is subject to review [by the circuit court] under the express provisions of section 15.' "

The question in this case has reference to the "amount of duties," and is therefore reviewable, under sections 14 and 15 of the act of June 10, 1890, by the Board of General Appraisers and by the circuit court. The amount of duties liquidated at the proclaimed value of the rupee would have been less than the amount liquidated at the exchange value. The Klingenberg Case is not an authority upon the proposition that where the Collector declines to accept the proclaimed value of a foreign standard coin, and adopts another standard, thereby increasing the amount of duties upon imported merchandise, his action is not the subject of review, under the act of 1890. Our conclusion is that the Board of General Appraisers and this court have jurisdiction, and that the decision of the board reversing the action of the Collector should be affirmed. The decision of the Board of General Appraisers is affirmed.

3.

The General Appraisers' first decision in Beebe's case (T. D., 21423—July 20, 1899.)

The invoices cover merchandise shipped from India, the currency of the invoice being made out in rupees. The entry was

made on October 18, 1898. Appended to the invoices is a consular certificate, bearing date of August 11, 1898, which reads as follows:

I further certify that the exchange value of the rupee, in which currency the annexed invoice of merchandise is made out, is at this date 32.11 cents estimated in United States gold dollars.

On February 17, 1899, the Collector liquidated the entry upon a basis of the exchange value of the rupee rated at 32.11 cents, as certified by the Consul. The protest claims that the rupee should have been taken at the value estimated by the Director of the Mint, and promulgated by the Secretary of the Treasury for the quarter of the year in which the goods were exported.

On July 1, 1898, the Secretary of the Treasury, pursuant to the provisions of section 25 of the tariff act of August 28, 1894, issued his proclamation (Circular 124, S. 19591) proclaiming the values of foreign coins, as estimated by the Director of the Mint, in terms of the money of account of the United States. The value of the rupee, in terms of the United States gold dollar, was stated to be $0.199. Appended to these estimates is a footnote, signed by the Director of the Mint, as follows: "Value of the rupee to be determined by consular certificate."

The controversy questions involved in this protest have been settled by the circuit court for the district of Massachusetts, in the case of the United States *v.* Newhall & Co. (91 Fed. Rep., 525), decided by Judge COLT January 7, 1899, affirming an unreported decision of the Board. After elaborate argument, the following propositions were settled in that case:

(1) That the action of the Collector in declining to liquidate the duties upon the basis of the proclaimed value of the silver rupee, and in adopting another standard based on the consular certificate, which liquidation resulted in increasing the amount of duty on the imported merchandise, does not relate to a disputed appraisement, but to the "amount of duties" involved, and that under the provisions of the customs administrative act of June 10, 1890, sections 14 and 15, such action was reviewable on the protest of the importer equally by the Board of General Appraisers and the circuit court; in other words, that the Board of Classification of United States General Appraisers had full jurisdiction of the questions involved. To a like effect in the case of Wood *v.* United States (72

Fed. Rep., 254), commenting on and construing United States *v.* Klingenberg (153 U. S., 93).

(2) That, in reducing the foreign standard coins to United States currency for the assessment of customs duties, the basis in all cases is required to be the value of the pure metal in such coins, and not their exchange value, such as was certified to by the Consul.

(3) That this long-established rule was not changed in any manner or abrogated by the proviso to section 25 of the tariff act of 1894 as to reliquidations in cases where it appears that the value of the foreign money specified in an invoice had varied at the date of the invoice more than 10 per cent from that proclaimed by the Secretary of the Treasury for the given quarter.

(4) That the Collector of Customs are not authorized to depart from such proclaimed value and adopt the exchange value shown by the consular certificate, for the purpose of assessing duties, merely because such consular certificate accompanying an invoice shows the current exchange value of the money of the invoice to be more than 10 per cent greater or less than the proclaimed value for the given quarter.

It necessarily follows from the doctrine of this decision that the annotation made by the Director of the Mint, namely, "The value of the rupee to be determined by consular certificate," was unauthorized by the terms of said section 25, as construed by the court. It would seem, moreover, that the Director of the Mint is required by law to estimate the value of such coins, and could not delegate to any other person the authority thus vested in him.

This case is clearly distinguishable from that class of cases represented by Board decision *in re* Noon Bag Company (G. A. 4288), in which a liquidation had been lawfully made by the Secretary of the Treasury pursuant to the authority conferred by section 25 of the tariff act of 1894, and of which the Board declines to take jurisdiction for the reasons stated in its decision.

Following the principles above cited, as enunciated in the decision of the circuit court in the Newhall case (*supra*), the protest is sustained, and the Collector's decision reversed, with instructions to reliquidate the entry accordingly, in the event of no appeal being taken from this decision by either the Secretary of the Treasury or the Collector of Customs at Boston in the time and manner prescribed by law.

4.

The U. S. Circuit Court in Beebe's case (103 Fed. Rep., 785—August 27, 1900).

COLT, Circuit Judge. This petition for review is governed by the principles laid down in U. S. v. Newhall & Co. (C. C.) 91 Fed. 525. In that case this court reached the following conclusions: (1) In reducing foreign standard coins to United States currency, for the assessment of duties, the basis in all cases is the value of the pure metal in such coins, and not their exchange value. (2) This long established rule was not changed by the proviso to section 25 of the tariff act of 1894 (28 Stat. 552) as to reliquidations where it appeared that the value of the foreign money specified in an invoice had varied at the time of the invoice more than 10 per cent. from that proclaimed by the Secretary of the Treasury for that quarter. (3) A Collector is not authorized, because the consular certificate accompanying an invoice shows the current exchange value of the money of the invoice to be more than 10 per cent. greater or less than the proclaimed value for the quarter, to depart from such proclaimed value, and adopt, for the purpose of assessing the duty, the exchange value shown by the certificate. (4) The action of a Collector in declining to accept the proclaimed value of a foreign standard coin, and in adopting another standard, thereby increasing the amount of duty on imported merchandise, does not relate to a disputed appraisement, but to the amount of duties; and under Customs Administrative Act June 10, 1890, §§ 14, 15, is reviewable, on the protest of the importer, by the Board of General Appraisers and the circuit court.

The present case presents the same state of facts as U. S. v. Newhall & Co., except in two particulars:

First. To the estimate of the pure-metal value of foreign coins, including the rupee, in United States money, by the Director of the Mint, as proclaimed by the Secretary of the Treasury on July 1, 1898, was appended the following note: "Value of the rupee to be determined by consular certificate." This annotation was clearly unauthorized and void under section 25 of the tariff act of 1894, as construed by the court in U. S. v. Newhall & Co.

Second. The Secretary of the Treasury wrote a letter to the Collector, approving his action in liquidating the entry on the basis of

the exchange value of the rupee, as certified by the United States Consul in the invoice, as follows:

"WASHINGTON, D. C., March 31, 1899.

"Collector of Customs, Boston, Mass.—Sir: The department is in receipt of your letter of the 20th ultimo, transmitting the following described protest against your action in estimating the value of the India rupee in certain importations from Madras, India, on the basis of the values shown in the U. S. consular certificates attached to the invoices: Protest 111, of Messrs. Lucius Beebe & Sons, dated Boston, Feb. 17, 1899; importation, 27 bales of tanned goat skins, per Columbian, Oct. 18, 1898; entry liquidated Fed. 17, 1899. You submit the invoices, Nos. 1,610 and 1,611, dated Madras, India, August 11 and September 1, 1898, respectively, for the inspection of the department, and call attention to the fact that the U. S. consular certificates attached thereto state that the exchange value of the rupee, in which currency the said invoices are made out, was, at the date of shipment, 32.11 cents, estimated in U. S. gold dollars, and that inasmuch as said valuation is more than ten per centum greater than the value of the India rupee as estimated by the Director of the Mint for the quarter covering said shipment, you have, following department's rulings, synopses 17,766 and 18,110, assessed duties on the basis of the valuation of the India rupee as certified by the U. S. Consul on said invoices. In reply, I have to inform you that from an inspection of the invoices, and of the U. S. consular certificates attached thereto, the department is satisfied that the correct and true value of the India rupee was, at the date of shipment or the said merchandise, in fact more than ten per centum greater than that estimated by the Director of the Mint for the quarter covering said shipments. Your action in liquidating the entry on the basis of this higher valuation for the India rupee is therefore hereby approved, under the authority conferred upon the Secretary of the Treasury by section 25 of the act of August 28, 1894."

The consular certificate bearing the date of August 11, 1898, reads:

"I further certify that the exchange value of the rupee, in which currency the annexed invoice of merchandise is made out, is at this date 32.11 cents, estimated in United States gold dollars."

The Collector liquidated the entry February 17, 1899. The entry bears this stamp:

"Custom House, Boston, February 17, 1899. Liquidated."

The proviso in section 25 is as follows :

"The Secretary of the Treasury may order the reliquidation of any entry at a different value, whenever satisfactory evidence shall be produced to him showing that the value in United States currency of the foreign money specified in the invoice was, at the date of certification, at least ten per centum more or less than the value proclaimed during the quarter in which the consular certification occurred."

The contention of the government is that the approval by the Secretary of the Treasury in his letter of March 31, 1899, of the action of the Collector was a reliquidation of the entry under this proviso, and that such reliquidation is conclusive, and not subject to review by the Board of General Appraisers or by the circuit court. The proviso says that "the Secretary of the Treasury may order the reliquidation of any entry at a different value." If we are to give any signification to the words "reliquidation" and "different value," they mean, in connection with the preceding part of the section, that there must have been a liquidation of the entry at the proclaimed value before the Secretary can direct a reliquidation at a different value. We do not find in this case any order of the Secretary directing a reliquidation of the entry at a different value from the proclaimed value, nor any reliquidation by the Collector. The record discloses a single liquidation by the Collector upon a basis not in conformity with law, as held by this court in U. S. v. Newhall & Co., and an approval of such action by the Secretary. To hold such approval of the Collector's liquidation based upon a wrong principle, a reliquidation under the proviso of section 25 would, in my opinion, do violence to the express language of the statute. To adopt such a construction is to declare that the Collector, in the first instance, may liquidate an entry, not upon the proclaimed value in pure metal of the foreign coin as required by section 25, but upon any standard of value he chooses to adopt, and that such liquidation is lawful and binding, provided the Secretary of the Treasury ratifies his action under the authority conferred by the proviso. I am unable to assent to the able and ingenious argument of the government's counsel in support of this interpretation of the statute. Whether this case is reviewable by the Board of General Appraisers or by the circuit court depends upon whether there has been a reliquidation under the proviso of section 25. A valid reliquidation under this proviso would seem to be as conclusive as the proclaimed value under the preceding part of the section.

Cramer v. Arthur, 102 U. S. 612, 619, 26 L. Ed. 259; Hadden v. Merritt, 115 U. S. 25, 27, 29 L. Ed. 333; U. S. v. Klingenberg, 153 U. S. 93, 99, 14 Sup. Ct. 790, 38 L. Ed. 647. The decision of the Board of General Appraisers is affirmed.

The court makes the following findings of fact:

(1) The importation in this case consists of 27 bales of tanned goat skins, shipped to Boston, Mass., from Madras, India. Said merchandise was included in two invoices, one dated August 11, 1898, for 13 bales of skins, and the second dated August 31, 1898, for 14 bales of skins.

(2) The invoice dated August 11th showed a total value for the merchandise therein referred to, including certain nondutiable charges, amounting to rupees (silver) 290./6./4, as follows: Rupees (silver) 9,187./15./4.

(3) The invoice dated August 31st showed a total value for merchandise therein referred to, including certain nondutiable charges, amounting to rupees (silver) 337./15./5, as follows: Rupees (silver) 9,150./5./10.

(4) The total value of the merchandise included in both of said invoices, including nondutiable charges, the total of which is rupees 628./5./9, amounts to: Rupees (silver) 18,338./5./2.

(5) Said 27 bales of goat skins were entered for consumption by Lucius Beebe & Sons, the respondents and owners of said merchandise, in the port of Boston and Charlestown, October 18, 1898. After deducting from the invoice value the sum of rupees 628./5./9, for nondutiable charges, the dutiable value, as ascertained at the custom house, Boston, is as follows: Rupees (silver) 17,709./15./5, and also in dollars $5,687, reduced at the rate of 32.11 cents per rupee. Duties were paid by the respondents on October 19, 1898, at the rate of 10 per cent. ad valorem on said $5,687.

(6) On July 1, 1898, the Secretary of the Treasury issued a circular, the material parts of which are as follows:

"Value of Foreign Coins. 1898.

"Department Circular No. 124.

"Treasury Department, Bureau of the Mint.

"WASHINGTON, D. C., July 1, 1898.

"Hon. Lyman J. Gage, Secretary of the Treasury—Sir: In pursuance of the provisions of section 25 of the act of August 28, 1894, I present in the following table an estimate of the values of the standard coins of the nations of the world:

Country.	Standard.	Mon. Unit.	Value in terms of U. S. gold dollars.	Coins
India.	Silver.	Rupee.	.199	Gold, mohur (7.105) Silver; rupee and divisions.

* * * * * * *

"(Appended to the estimates is the following footnote:)
"Value of the rupee to be determined by consular certificate.
"Respectfully yours,
"B. F. BUTLER, Acting Director of the Mint.

"Treasury Department. Office of the Secretary.

"WASHINGTON, D. C., July 1, 1898.

"The foregoing estimate by the Director of the Mint, of the values of foreign coins, I hereby proclaim to be the values of such coins in terms of the money of account of the United States, to be followed in estimating the value of all foreign merchandise exported to the United States on or after July 1, 1898, expressed in any of such metallic currencies.

"L. G. GAGE, Secretary of the Treasury."

(7) Attached to the invoice of August 11 was the following consular certificate, dated August 11, 1898:

"I further certify that the exchange value of the rupee, in which currency the annexed notice of merchandise is made out, is at this date 32.11 cents, estimated in United States gold dollars."

(8) Attached to the invoice of August 31st was a similar consular certificate, under date of September 1st.

(9) The entry was liquidated by the Collector on February 17, 1899, at the exchange value of the rupee, namely, 32.11 cents, as certified by the Consul. Thereafter, on the same day, the protest and notice of appeal from said liquidation was duly filed by the respondents.

(10) Reduced into United States money at the rate proclaimed July 1, 1898, namely, 19.9 cents, the entered value of said merchandise, namely, rupees (silver) 17,709./15./5, would amount to $3,524, and the amount of duties payable thereon at 10 per cent. ad valorem would amount to $352.40.

Under the facts, the court makes the following rulings of law:

(1) The Court rules that the note appearing at the foot of the quarterly estimate of coin value, on July 1, 1898, "The value of the rupee to be determined by consular certificate," gave no right, power, or authority to the Collector to liquidate the entry in question at the value of the rupee stated by the United States Acting Consul in the certificates attached to the two invoices.

(2) The Collector, in adopting the exchange value of the rupee as certified by the United States Consul, and in not adopting the proclaimed value for the rupee, in liquidating the entry in question, acted illegally, and the Board of General Appraisers had jurisdiction to order a reliquidation at the proclaimed value.

(3) The decision of the Board of General Appraisers must be sustained unless it is shown that there has been a valid reliquidation of the entry in question under the authority conferred upon the Secretary of the Treasury by the proviso of section 25 of the tariff act of August 28, 1894.

(4) The court rules that there is no evidence of the reliquidation of this entry, and that said entry has never been reliquidated.

(5) The court rules that the letter of the Assistant Secretary of the Treasury, dated March 31, 1899, does not contain an order for the reliquidation of the entry in question, nor does it amount to a reliquidation of the same.

5.

The U. S. Circuit Court of Appeals in the same case (106 Fed. Rep., 75—January 16, 1901).

PUTNAM, Circuit Judge. This is an appeal by the United States against importers, arising under section 25 of the tariff act of 1894, c. 349 (28 Stat. 552), as follows:

"SEC. 25. That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint, and be proclaimed by the Secretary of the Treasury immediately after the passage of this act, and thereafter quarterly on the first day of January, April, July, and October in each year. And the values so proclaimed shall be followed in estimating the value of all foreign merchandise exported to the United States during the quarter for which the value is proclaimed, and the date of the consular certification of any invoice shall, for the purposes of this section, be considered the date of exportation: provided, that the Secretary of the Treasury may order the reliquidation of any entry at a different value, whenever satisfactory evidence shall be produced to him showing that the value in United States currency of the foreign money specified in the invoice was, at the date of certification, at least ten per centum more or less than the value proclaimed during the quarter in which the consular certification occurred."

The proceeding is under sections 14 and 15 of the customs administrative act, approved on June 10, 1890 (26 Stat. 137, 138). The invoice was in silver rupees, and the United States claim that the proviso which concludes section 25 of the act of 1894 applies to the case. Due entry having been made by the importers, the Collector, instead of computing the rupee in accordance with the value proclaimed pursuant to the general terms of that section, liquidated the invoice by estimating it in the manner which it is alleged is permitted to the Secretary of the Treasury on reliquidation according to its proviso. Thereupon, on February 17, 1899, the importers paid the duties, and seasonably and properly protested on the ground that the Collector had assessed the ad valorem duty provided by law by valuing the rupee of the invoice at a rate or value other and more than that estimated and determined by the Director of the United States Mint and proclaimed by the Secretary of the Treasury.

They also claimed in their protest that there should be refunded to them all excessive duties paid in accordance with the liquidation. The Board of General Appraisers on July 20, 1899, reviewed the case, and entered an order as follows: "The protest is sustained, and the Collector's decision reversed, with instructions to reliquidate the entry accordingly." This was in accordance with section 14 of the act approved on June 10, 1890, which provides that a decision of the Board of General Appraisers shall be "transmitted to the proper Collector, or person acting as such, who shall liquidate the entry accordingly," except in case of an appeal. The United States seasonably, by their petition, applied to the circuit court as provided in section 15 of the last-named statute. That court entered a judgment as follows: "The decision of the Board of the United States General Appraisers is hereby affirmed, and petition dismissed." From this judgment the United States seasonably took this appeal. No appeal was taken by the importers.

Subsequently to the protest, on March 31, 1899, the Secretary of the Treasury wrote the Collector, among other things, as follows:

"In reply, I have to inform you that from an inspection of the invoices, and of the U. S. consular certificates attached thereto, the department is satisfied that the correct and true value of the India rupee was, at the date of shipment of the said merchandise, in fact more than ten per centum greater than that estimated by the Director of the Mint for the quarter covering said shipments. Your action in liquidating the entry on the basis of this higher valuation for the India rupee is, therefore, hereby approved, under the authority conferred upon the Secretary of the treasury by section 25 of the act of Aug. 28, 1894."

The United States claim that this communication constituted a reliquidation as provided in section 25 of the act of 1894, and that it operated to validate the prior proceedings by the Collector, or, at least, that it became effective to defeat the protest. That communication was not before the General Appraisers when they made their decision, but it was properly returned into the circuit court as "further evidence," as provided in section 15 of the act of 1890.

The parties have fully argued before us certain substantial issues which they desire to raise with reference to the construction and application of the proviso in section 25 of the act of 1894; but we are unable to consider them, because they are not properly before us on this record. It is impossible for the court to foresee all the consequences involved in the right of an importer to have a liquida-

tion by the Collector in accordance with the proclaimed value of foreign coins, as directed in the general terms of the statute in question, or to foresee how far the rights of the United States and of importers may be involved in unauthorized departures from the precise form of proceeding which the law requires in this respect. Whatever may be the powers of the Secretary of the Treasury, and whatever effect may be given to his reliquidation in accordance with the proviso, it is the legal right of the importer to have his invoice properly liquidated by the collector in the first instance. This right became fixed in the present case by the protest filed by the importers before any action was taken by the Secretary of the Treasury, and it cannot be taken away by any such action subsequent in date to the irregular proceedings at the port of importation. The decision of the Board of General Appraisers, the judgment of the circuit court, and the fact that only the United States have appealed, if the importers could also have done so, leave nothing to be considered by this court except the action of that board in directing the Collector to liquidate the entry in accordance with its order. What proceedings should follow that liquidation, and what may be the effect of those proceedings, we have not undertaken to determine, for the reasons we have already stated. We must affirm the judgment of the circuit court, but, in order that the effect of the affirmation shall not be misunderstood or misapplied, we deem it proper to make it clear that the result of this appeal is without prejudice to the ultimate rights of the parties.

The judgment of the circuit court is affirmed, without prejudice to the right of either party to proceed further, after a proper liquidation by the Collector of Customs at the port of Boston, in accordance with section 25 of the tariff act of August, 1894, including the proviso therein, or in accordance with any other direction of law applicable to the circumstances of the case, if there be any such right.

6.

The U. S. Supreme Court denies the Government's prayer for review of the last above (October term, 1900—March 11, 1901).

7.

The General Appraisers' second decision in Beebe's case (T. D., 23384—November 26, 1901).

The protest in this case involves the construction of the proviso to section 25 of the tariff act of August 28, 1894 (ch. 349, 28 Stat., p. 552), and especially so far as it confers upon the Secretary of the Treasury the power to reliquidate an entry at a different value for the foreign coin of the invoice from that ascertained by the Director of the Mint, on the production of evidence satisfactory to the Secretary, showing the change in value of the Indian rupee (which is the foreign money specified in the invoice) of at least 10 per cent. more or less than the value proclaimed for the quarter in which the consular certification occurred.

The facts of the case have been agreed on in writing, and as to these there is no room for dispute. The merchandise consists of 27 bales of skins, included in two separate invoices, which were imported and entered at the port of Boston for consumption on October 18, 1898, by Lucius Beebe & Sons, who are the protestants. The metal value of the silver rupee of India was ascertained by the Director of the Mint to be $0.199, measured in terms of the United States gold dollar, and this value was proclaimed by the Secretary of the Treasury July 1, 1898, in Department Circular No. 124 (T. D. 19591), relating to the value of foreign coin. The consular agent of the United States at Madras, India, attached the following certificate to one of the invoices, under date of August 11, 1898:

> I further certify that the exchange value of the rupee, in which currency the annexed invoice of merchandise is made out, is at this date 32.11 cents, stated in United States gold dollars.

A similar certificate was attached to the other invoice, dated September 1, 1898.

On July 23, 1901, in pursuance of a judgment of the United States circuit court of appeals for the first circuit, entered July 16, 1901 (United States *v.* Beebe, 106 Fed. Rep., 75; 45 C. C. A., 230), the Collector at the port of Boston liquidated the amount of duties payable under said entry at the value of 19.9 cents, for each rupee, as proclaimed in the circular issued by the Treasury Department above cited.

On July 25, 1901, the Secretary of the Treasury wrote a letter to the Collector, in which, after referring to the fact that the entry in question had been liquidated on the basis of the value of the rupee as proclaimed by the Secretary of the Treasury for the quarter covering the shipment, namely, 19.9 cents, he proceeded to instruct said Collector as follows:

In this regard, I have to inform you that satisfactory evidence has been produced to the Secretary of the Treasury showing that the value in United States currency of the foreign money of the invoice, namely, the rupee of India, was 32.11 cents at the date of certification, which is 10 per cent more than the value proclaimed during the quarter in which the consular certification occurred.

In view of the fact stated, you are hereby directed to reliquidate the entry hereinbefore mentioned on the basis of this latter value, under the authority conferred upon the Secretary of the Treasury by the proviso to section 25 of the act of August 28, 1894.

The entry and other papers submitted are herewith returned.

Respectfully,

O. L. SPAULDING, *Assistant Secretary.*

The agreed statement of facts in this case contains the following further stipulation:

XIV.

The order for reliquidation set forth in the letter in the preceding paragraph was not based upon any difference between the pure metal value of Indian rupees on August 11, 1898, and September 1, 1898, the dates, respectively, of consular certification of said invoices, and the value for said rupee of India contained in the Secretary of the Treasury's proclamation of value for the quarter commencing July 1, 1898, the quarter in which these exportations occurred; and the pure metal value of said rupees in terms of United States gold dollars on each of said dates of consular certification was substantially 19.9 cents, being the value thereof contained in said proclamation. And the value of 32.11 cents for the rupees of said invoices set forth in the letter in Paragraph XIII was not intended to be the pure metal value of such rupees on said dates of certification.

XV.

In accordance with said letter, dated July 25, 1901, on the 26th day of July, 1901, said Collector reliquidated the duty on said goods by taking the rupees of said invoice at the value of 32.11 cents. The amount of duty thus assessed was $568.70.

Against this reliquidation, thus admitted to be based upon the exchange value of the rupee (32.11 cents) and not upon the metal value (19.9 cents), the said Lucius Beebe & Sons duly and seasonably protested, claiming that the reliquidation ordered to be made by the Secretary of the Treasury under the terms of the proviso of said section 25 of the tariff act of 1894 was unauthorized by law and null and void, inasmuch as the only authority conferred by said proviso upon the said Secretary was to reliquidate said entry upon the basis of the *metal value* of said rupee, and not upon the exchange value of said coin under the conditions mentioned in said section, under the authority of which the reliquidation was ordered.

It was further claimed that the right of the Collector to reliquidate this entry, either of his own motion or under instructions from the Secretary of the Treasury, was limited to one year from the date of entry, in the absence of fraud and in the absence of protest, as provided by section 21 of the act of June 22, 1874, which reads as follows (see 18 U. S. Stat., p. 190):

> That whenever any goods, wares, and merchandise shall have been entered and passed free of duty, and whenever duties upon any imported goods, wares, and merchandise shall have been liquidated and paid, and such goods, wares, and merchandise shall have been delivered to the owner, importer, agent, or consignee, such entry and passage free of duty and such settlement of duties shall, after the expiration of one year from the time of entry, in the absence of fraud, and in the absence of protest by the owner, importer, agent, or consignee, be final and conclusive upon all parties.

The proper construction of said section 25 of the act of August 28, 1894, has been the subject of protracted litigation in the courts for many years past. In United States *v.* Newhall & Co. (91 Fed. Rep., 525), decided by Judge COLT, January 7, 1899, affirming an unreported decision of this Board, it was held that, in reducing the foreign standard coins of United States currency for the assessment of customs duties, the basis in all cases is required to be the value of the *pure metal* in such coins, and not their *exchange value*, such as was certified by the Consul and adopted by the Secretary of the Treasury in this case.

It was further held that, inasmuch as a liquidation made by the Collector in that case adopting an illegal valuation of the silver rupee resulted in an increase of the amount of duty on imported merchandise, his action was reviewable on the protest of the importer equally by the Board of General Appraisers and the courts.

In other words, the court decided that the Board of Classification of United States General Appraisers had full jurisdiction of the questions involved under the provisions of section 14 of the customs administrative act of June 10, 1890.

The above decision was followed by this Board in the case of Lucius Beebe & Sons (G. A. 4498) decided July 20, 1899, covering the merchandise now under consideration. This decision was affirmed on appeal to the circuit court for the district of Massachusetts on August 27, 1900, in United States *v.* Beebe (103 Fed. Rep., 785). That court, in an elaborate opinion by Judge COLT, fully reaffirmed the doctrine announced in the Newhall case, and held that the Secretary of the Treasury had no authority to direct a liquidation of an entry for customs duties upon the basis of the exchange value of the foreign coin, as declared by the consular certificate; and, further, that the question of reviewing the action of the Collector was one falling within the jurisdiction of the Board of General Appraisers and of the courts.

It was admitted, however, by the court in its opinion that "a valid reliquidation under this proviso (of said section 25) would seem to be as conclusive as the proclaimed value under the preceding part of the section," thus affirming the view taken by this Board in *in re* Noon Bag Company (G. A. 4288), where the Board declined jurisdiction of a protest against a reliquidation of an entry which appeared, so far as shown by the record, *to have been lawfully made* by the Secretary of the Treasury pursuant to the authority conferred on him by said section 25 of the tariff act of 1894.

On appeal being taken from the decision of the circuit court, both the decisions of the court and of this Board were affirmed by the circuit court of appeals in United States *v.* Beebe (106 Fed. Rep., 75; 45 C. C. A., 230); and a petition for a writ of *certiorari* to review the decision of the circuit court of appeals was denied by the United States Supreme Court. (See 180 U. S., 640; 21 Sup. Ct. Rep., 922.)

The following language was used by Judge PUTNAM, in the conclusion of the opinion of the circuit court of appeals above cited:

> The judgment of the circuit court is affirmed without prejudice to the right of either party to proceed further, after a proper liquidation by the Collector of Customs at the port of Boston, in accordance with section 25 of the tariff act of August, 1894, including the proviso therein, or in accordance with any other direction of law applicable to the circumstances of the case, if there be any such right.

This must be construed not to bar, or in any manner interfere with the right of the Secretary of the Treasury to reliquidate the entry in question on satisfactory evidence that the *metal value* of the rupee exceeded by 10 per cent the proclaimed value. It can not be construed to authorize a reliquidation upon the basis of any other value than that decided by the court to be the legal value of the foreign coin in question. It necessarily follows from what we have said, in the light of these numerous court decisions, that the action of the Secretary of the Treasury was not in accordance with the authority conferred on him by law.

In justification of the action of the Secretary of the Treasury, it is contended by the counsel for the Government that the word "value," as used in the proviso of said section 25, may have a different meaning from the same word as used in the section on which it is engrafted.

There are several insuperable objections to this view. The rule is well settled that the proper function of a proviso being to restrict an enacting clause, general in its scope and language, "it is to be strictly construed, and limited to the objects fairly within its terms." (Bragg *v.* Clark, 50 Ala., 363; Sutherland on Stat. Con., sec. 223.) So it is equally well settled that the same word appearing in different parts of a law presumptively is intended to be used in the same sense, unless a different intent be shown by the context of the particular section or paragraph under consideration; nor, in general, is it permissible to "assign different meanings to the same words on the ground of a supposed general intention of the legislature." (Endlich on Inter. of Stat., sec. 41 and 388.)

In view of these principles, it can scarcely be supposed that Congress intended to confer upon the Secretary of the Treasury the authority to reliquidate an entry upon any other basis than the metal value of foreign coins, as mentioned in the body of said section. Such a construction would be in clear violation of the fundamental rule that every part of a statute is to be construed in connection with every other part, and that all of its words and phrases must be construed, if possible, harmoniously, so as to accomplish the legislative intent.

The only further question for consideration is whether this Board, whose jurisdiction has been repeatedly held to be coextensive with that of the circuit court under the provisions of sections 14 and 15 of the customs administrative act, possesses jurisdiction to review and correct the action of the Collector, based, as has been

shown, upon the order of the Secretary of the Treasury. (United States *v.* Klingenberg, 153 U. S., 93 14 Sup. Ct. Rep., 799; Wood *v.* United States, 72 Fed. Rep., 254, 18 C. C. A., 553; United States *v.* E. L. Goodsell Company, 91 Fed. Rep., 519, 33 C. C. A., 661, affirming *in re* Goodsell, G. A. 3880.)

The question is undoubtedly one involving the increased amount of duty imposed upon imported merchandise by the action of the Secretary; and, the facts being undisputed, questions of law only are involved. It is contended by counsel for the Government that we are without jurisdiction to correct the error of law upon which the Collector's and Secretary's action is shown to have been based, because the action of the Secretary in ordering a reliquidation by virtue of the authority conferred upon him by section 25 is conclusive, and whether correct or incorrect is not subject to judicial review. In this view of the case, we are unable to concur. While we admit the general doctrine that, when the law has confided to a special tribunal the authority to decide certain matters arising in the course of duties, the decision of that tribunal, within the scope of its authority, is conclusive, yet we do not overlook the fact that there are certain well-settled exceptions to such a rule. These exceptions were stated by Mr. Justice FIELD, in speaking of the decisions of the Land Office, a bureau of the Department of the Interior, to be as follows:

> The officers of the Land Department are specially designated by law to receive, consider, and pass upon proofs presented with respect to settlements upon the public lands, with a view to secure rights of pre-emption. If they err in the *construction of the law* applicable to any case, or if fraud is practised upon them, or they themselves are chargeable with fraudulent practices, their rulings may be reviewed and annulled by the courts when a controversy arises between private parties founded upon their decisions; but, for mere errors of judgment upon the weight of evidence in a contested case before them, the only remedy is by appeal from one officer to another of the same Department. (Shepley *v.* Cowan, 91 U. S., 340.)

The same doctrine was forcibly stated by Mr. Justice MILLER in Johnson *v.* Towsley (13 Wall, 72), where, after setting forth the rule we have just mentioned as to special tribunals, he added (page 84):

> No reason is perceived why the action of the Land Office should constitute an exception to this principle.

And both of these cases were approved by the Supreme Court in Moore *v.* Robbins (96 U. S., 530, 535). See also Shaw *v.* Kellogg, 170 U. S., 312, 18 Sup. Ct. Rep., 632; Corporation of Catholic Bishop *v.* Gibbons, 158 U. S., 155, 15 Sup. Ct. Rep., 779; Wisconsin Central Railroad Company *v.* Forsythe, 159 U. S., 46, 61; Germania Iron Company *v.* James, 89 Fed. Rep., 811, 32 C. C. A., 348; Puget Mill Company *v.* Brown, 54 Fed. Rep., 987; Railroad Company *v.* Colburn, 164 U. S., 383, 17 Sup. Ct. Rep., 98; and note on page 40 of volume 22 C. C. A. Rep., containing a full review of the cases.)

A like rule was applied to a decision of the Patent Office (another bureau of the Interior Department), where the Commissioner of Patents, under an erroneous view of the law, no question of fact being involved, had refused, under the instructions of his superior, the Secretary of the Interior, to issue a patent to those applying for it. (Butterworth *v.* Hoe, 112 U. S., 50.)

The same principle has frequently been extended to decisions of appraisement tribunals, and particularly to decisions of the Board of General Appraisers, sitting as an appraisement board under the provisions of section 13 of the customs administrative act of June 10, 1890, although that section expressly enacts that the decision of the Board "shall be final and conclusive as to the dutiable value" of imported merchandise. But, as observed by Chief Justice FULLER, "while the general rule is that the valuation is conclusive upon all parties, nevertheless the appraisement is subject to be impeached, where the Appraiser or Collector has proceeded on a *wrong principle, contrary to law*, or has transcended the powers conferred by statute." (United States *v.* Passavant, 169 U. S., 209; 18 Sup. Ct. Rep., 219, 221, citing numerous cases.)

It was upon a like principle that the Board of Classification recently assumed jurisdiction of a case involving the legality of the action of a Collector of Customs in assessing upon certain sugar imported from Russia, a countervailing duty under section 5 of the tariff act of July 24, 1897, which provides that whenever any country shall pay or bestow any bounty or grant upon the exportation of any article, there shall be levied an additional duty equal to "the net amount of such bounty or grant." The statute expressly enacts that "the net amount of all such bounties or grants shall be from time to time ascertained, determined, and declared by the Secretary of the Treasury," who is empowered to make all needful regulations for the collection of such additional duties. After observing that, if in fact any bounty or grant was bestowed, the

Secretary's finding as to its amount, "being made in pursuance of a special statutory authority, would be quite as conclusive on this Board and the courts as the finding of the value of foreign coin by the Director of the Mint, under the provisions of section 25 of the tariff act of 1894," the Board said (see *in re* Downs, G. A. 4912):

It is conceded, however, that the decision of the Secretary as to whether the laws of Russia do, in fact, bestow such a bounty or grant, is reviewable by this Board, as it *involves the construction of the laws of Russia* relating to the precise subject-matter covered by said section above cited. The jurisdiction of the Board in this particular has been sustained by the United States circuit court of appeals for the second circuit in the recent case of United States *v.* Hill Brothers Company, decided February 8, 1901 (107 Fed. Rep., 107).

This decision of the Board has since been affirmed by the United States Circuit court at Baltimore, per MORRIS, *J.*; opinion delivered in October last and not yet reported, the jurisdiction of the Board not having been questioned.

As the facts which have been agreed upon by counsel make it clear that the Secretary's action was based entirely on an erroneous view of the law, we entertain no doubt that this Board and the courts have jurisdiction in the premises. The case of Ferry *v.* United States (85 Fed. Rep., 550, which affirmed a principle adopted by this Board in *in re* Rugiero, G. A. 1024; see also *in re* Levac, G. A. 4830) in no way conflicts with the above view. The question there involved was the abatement or refunding of duties paid on merchandise which had been destroyed in whole or in part by accidental fire or other casualty while in the custody of the Government, and it was held that the jurisdiction of the Board of General Appraisers did not extend to such cases, but that the provisions of section 2984 of the Revised Statutes made the Secretary's jurisdiction exclusive. The subject-matter, it will be noted, was one having no relations to the rate or amount of duty on imported merchandise, within the scope of section 14 of the customs administrative act of June 10, 1890, which creates and defines the jurisdiction of this Board.

Our conclusion, therefore, is that the instructions of the Secretary of the Treasury to the Collector of Customs at Boston, directing that officer to reliquidate the entry of Lucius Beebe & Sons, on a basis of 32.11 cents value for the Indian rupee, were based on an erroneous view of the law as embodied in section 25 (with the

proviso thereof) of the tariff act of August 28, 1894, and that the true construction of said section and proviso requires that, "in reducing the foreign standard coins to United States currency for the assessment of customs duties, the basis in all cases is required to be the value of the *pure metal* in such coins, and not their *exchange value*," as held by Judge COLT in Newhall's case (91 Fed. Rep., 525), and reaffirmed in Beebe's case (103 Fed. Rep., 785), and again by the circuit court of appeals in 45 C. C. A., 230.

The construction given by the Treasury Department to any law affecting its arrangements and concerns is certainly entitled to great respect. Still, however, if it is not in conformity to the true intendment and provisions of the law, it can not be permitted to conclude the judgment of a court of justice. The construction given by any department of the Executive Government is necessarily *ex parte*, without the benefit of an opposing argument, in a suit where the very matter is in controversy; and when the construction is once given there is no opportunity to question or revise it by those who are most interested in it as officers, deriving their salaries and emoluments therefrom, for they can not bring the case to the test of a judicial decision. (Opinion of STORY, *J.*, in United States *v.* Dickson, 15 Peters, 141, 161; cited in United States *v.* Murphy, 32 Fed. Rep., 376, 382.)

The act of the Secretary being unauthorized by law was necessarily null and void, and afforded no validity whatever to the action of the Collector, who was the Secretary's agent for the reliquidation of the entry upon an erroneous basis. So far as the record is concerned, therefore, the reliquidation must be treated as that of the Collector alone.

In this respect, the case under consideration differs from Board decision *in re* Noon Bag Company (G. A. 4288), where the record failed to disclose that the Secretary had acted outside the authority conferred on him by statute.

As to the contention made by the importers that the Government's right to reliquidate the entry was barred by the statute of limitations prescribed by section 21 of the act of June 22, 1874, above cited, it is only necessary to say that, while we strongly incline to the view that the point is well taken, it is unnecessary that we should base our decision upon that point, which we, therefore, leave undecided.

The protest is sustained and the decision of the Collector reversed, with instructions to reliquidate the entry accordingly.

8.

The U. S. Circuit Court in Beebe's second case (117 Fed. Rep., 670—September 4, 1902).

COLT, Circuit Judge. This is a second petition for review, relating to the same entry of merchandise. The decisions of the circuit court of appeals and of the circuit court on the first petition are found in 45 C. C. A. 230, 106 Fed. 75, and 103 Fed. 785. While the specific questions now presented may differ in form, the principles which underlie and control both these petitions were carefully considered by this court in U. S. v. J. Allston Newhall & Co. (C. C.) 91 Fed. 325. That case involved the construction of section 25 of the tariff act of 1894, and especially the proviso thereof (28 Stat. 552); and this is true of both these petitions. In U. S. v. J. Allston Newhall & Co. this court said:

"This section, until we reach the proviso, is substantially a reenactment of the previous law. The contention of the government rests upon the proposition that the word 'value' in the proviso is not limited to the value 'of the pure metal,' but extends to other methods of valuation, never before adopted with respect to specified foreign standard coins. To adopt this construction is to hold that Congress intended to depart from the long-established rule, and to introduce a new and uncertain mode of valuation in cases coming within the terms of the proviso. The result is that the body of the section provides one way, and one way only, for estimating the value of standard coins, while the proviso covers other ways in conflict with former well-settled principles. Certainly, the court should not adopt such a construction, if it be at all doubtful. To hold that, where the value of the foreign coin during the quarter varies less than ten per centum from the value proclaimed, the pure-metal value is to govern, and that when it exceeds ten per centum the Secretary of the Treasury may adopt any standard of valuation he sees fit, based upon rate of exchange, trade conditions, or financial reports, would result in the introduction of those elements of uncertainty and confusion which the law has aimed especially to prevent. The purpose of the proviso, in our opinion, was, not to change the principle in estimating the value of foreign coins, but rather to permit of a different estimate on the same principle, if it should appear at any time during the quarter that the proclaimed value was to a considerable degree at variance with the actual fact existing at the time of any given importation. While the standard of valuation should be fixed and based on intrinsic value, the whole legislation on this subject shows an effort on the part of Congress to

provide speedier means for correcting the valuation when it is shown to be wrong. Until 1873 any change in the valuation of specified foreign standard coin required a special enactment. By the statute of 1873 the proclaimed estimate must be made annually. By the statute of 1890 it must be promulgated quarterly. The proviso, in section 25 of the act of 1894, was simply another step in the same direction, and was intended to permit a new estimate of valuation at any time during the quarter, where there was found to be an error of at least ten per centum. This is the natural construction and evident intent of the whole section, and is in harmony with previous legislation. * * * The second question raised by the government under the assignment of errors is that the Board of General Appraisers had no jurisdiction to review the action of the Collector in estimating the value in United States money of foreign coin. This case is not one of disputed appraisement of the value of imported merchandise, as to which the decision of the Board of General Appraisers is made final under section 13 of the customs administrative act of June 10, 1890. U. S. v. Klingenberg, 153 U. S. 93, 102, 14 Sup. Ct. 790, 38 L. Ed. 647; Hilton v. Merritt, 110 U. S. 97, 3 Sup. Ct. 548, 28 L. Ed. 83. The dutiable value in rupees of the merchandise in this case is admitted under the agreed statement of facts; the only issue being whether this court or the Board of General Appraisers has jurisdiction to review the action of the Collector in reducing to United States currency the value of the rupees. Such jurisdiction, if any, must be found in sections 14 and 15 of the act of June 10, 1890. The jurisdiction conferred upon the circuit court by section 15 is coextensive with the jurisdiction conferred on the Board of General Appraisers by section 14. This was so held by the supreme court in the Klingenberg Case (153 U. S. 93, 14 Sup. Ct. 790, 38 L. Ed. 647) in the following words: 'The subjects of review by the circuit court, provided for by section 15, extend to all questions of law and fact in respect to which the Board of General Appraisers have appellate jurisdiction, except the decision of that Board as to the dutiable value of merchandise, which is provided for by section 13, and is made conclusive against all parties interested.' In construing section 14, the court says: 'By section 14 the Collector's decision on rate and amount of duties, including all dutiable costs and charges, and as to all fees and exactions of whatever character (except duties on tonnage), may be the subject of appeal to the Board of General Appraisers.' The Klingenberg Case decided that, where the Collector was simply called upon, under the statute, to follow the estimate of value made by the Director of the Mint and proclaimed by the Secretary of the Treasury, his action was not subject to review by the Board of General Appraisers. If, for example, in the present case, the Collector had adopted the proclaimed rate for the rupee on January 1, 1896, of $.233, his decision would have been final. This conclusion of the court was based upon the rule laid down in Collector v. Richards, Cramer v. Arthur, Hadden v. Merritt, *ubi supra*. These authorities

show the absolute conclusiveness of the value estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury of the standard coin of foreign countries. After holding that the Collector's construction of the value as proclaimed was correct, the court said: 'This being the proper construction to be placed upon the proclamation of July 1, 1892, we are of the opinion that the Collector's action in adopting the value of the gold florin at the estimate fixed therein was not subject to review by the Board of General Appraisers, under the principle laid down in the authorities already referred to.' All the Klingenberg Case decided was that, when the Collector followed such proclaimed value, his action was not the subject of appeal under section 14. The present case is the reverse, for here the Collector refused to be governed by the proclaimed value. * * * The question in this case has reference to the 'amount of duties,' and is, therefore, reviewable under sections 14 and 15 of the act of June 10, 1890, by the Board of General Appraisers and by the circuit court. The amount of duties liquidated at the proclaimed value of the rupee would have been less than the amount liquidated at the exchange value. The Klingenberg Case is not an authority upon the proposition that where the Collector declines to accept the proclaimed value of a foreign standard coin, and adopts another standard, thereby increasing the amount of duties upon imported merchandise, his action is not the subject of review, under the act of 1890. Our conclusion is that the Board of General Appraisers and the court have jurisdiction, and that the decision of the Board reversing the decision of the Collector should be affirmed."

Following the conclusions in U. S. v. J. Allston, Newhall & Co., this court, on the first petition in the case at bar, held:

(1) In reducing foreign standard coins to United States currency for the assessment of duties, the basis in all cases is the value of the pure metal in such coins, and not their exchange value.

(2) This long-established rule was not changed by the proviso to section 25 of the tariff act of 1894 (28 Stat. 552), as to reliquidations, where it appeared that the value of the foreign money specified in an invoice had varied at the time of the invoice more than 10 per cent. from that proclaimed by the Secretary of the Treasury for that quarter.

(3) A Collector is not authorized, because the consular certificate accompanying an invoice shows the current exchange value of the money of the invoice to be more than 10 per cent. greater or less

than the proclaimed value for the quarter, to depart from such proclaimed value, and adopt, for the assessment of duties, the exchange value shown by the certificate.

(4) The action of a Collector in declining to accept the proclaimed value of a foreign standard coin, and in adopting another standard, thereby increasing the amount of duty on the imported merchandise, does not relate to a disputed appraisement, but to the amount of duties; and, under Customs Administrative Act June 10, 1890, §§ 14, 15, is reviewable, on the protest of the importer, by the Board of General Appraisers and the circuit court.

(5) The Collector, in adopting the exchange value of the rupee as certified by the United States Consul, and in not adopting the proclaimed value for the rupee, in liquidating the entry in question, acted illegally, and the Board of General Appraisers had jurisdiction to order a reliquidation at the proclaimed value.

(6) The decision of the Board of General Appraisers must be sustained unless it is shown that there has been a valid reliquidation of the entry in question under the authority conferred upon the Secretary of the Treasury by the proviso of section 25 of the tariff act of August 27, 1894.

(7) A valid reliquidation under this proviso is a reliquidation based upon the required difference between the pure metal value of the foreign coin and the proclaimed value, and is as conclusive as the proclaimed value under the preceding part of the section.

(8) The note appearing at the foot of the quarterly estimate of coin value on July 1, 1898, "The value of the rupee to be determined by consular certificate," gave no right, power, or authority to the Collector to liquidate the entry in question at the value of the rupee stated by the United States Acting Consul in the certificates attached to the two invoices.

Upon further consideration, the court sees no reason to change or modify the views expressed or the conclusions reached in these opinions. On the former petition, concerning the entry under consideration, the importers contend: First, that there had been in fact no reliquidation of the entry; and, second, that the reliquidation of the entry on any other basis than that of pure-metal value of the foreign coin was unauthorized. The circuit court considered both

these propositions, and decided both questions in favor of the importers. On appeal the circuit court of appeals properly only considered the first question, and, having determined that there had been in fact no reliquidation, affirmed the judgment of the court below on that ground, but "without prejudice to the right of either party to proceed further, after a proper liquidation by the Collector of Customs at the port of Boston, in accordance with section 25 of the tariff act of August, 1894, including the proviso therein." After the decision of the circuit court of appeals, the Collector liquidated the duties on the merchandise at the value of 19.9 cents for each rupee, in accordance with the proclaimed value of the rupee in pure metal, as set forth in the treasury circular of July 1, 1888. Thereupon the Secretary of the Treasury informed the Collector that "satisfactory evidence" had been produced to him "showing that the value in United States currency of the foreign money of the invoice, namely the rupee of India, was 32.11 cents at the dates of certification, which is ten per centum more than the value proclaimed during the quarter in which the consular certification occurred;" and in view of this fact he directed the Collector "to reliquidate the entry hereinbefore mentioned on the basis of this latter value [32.11], under the authority conferred upon the Secretary of the Treasury by the proviso to section 25 of the act of August 27, 1894." The Collector accordingly reliquidated the duty by taking the rupees of the invoice at the value of 32.21 cents each. By the agreed statement of facts it appears that this order for reliquidation was not based upon any difference between the pure-metal value of the rupee on August 11, 1888, and September 1, 1898, the dates, respectively, of the consular certificates of the invoices, and the proclaimed value for the quarter beginning July 1, 1898; that the pure-metal value of the rupee, in terms of United States gold dollars, on the dates of consular certification, was substantially 19.9 cents, being the value contained in the proclamation; and that the value of 32.11 cents was not intended to be the pure-metal value of the rupee on the dates of certification. The importers duly protested against this reliquidation, the Board of General Appraisers sustained the protest, and the United States has brought this petition for review in the circuit court.

In view of the decisions of this court, there is only one point now urged by the government which calls for serious consideration. It is contended that the action of the Collector cannot be impeached, because the power vested in the Secretary of the Treasury, under the

proviso of section 25 is absolute, and that his order for reliquidation, whether justified or not by the proper construction of the proviso, is not subject to judicial review. This argument is based on the ruling of the supreme court that the proclaimed value of foreign coins estimated by the Director of the Mint is final, and cannot be reviewed by the Board of General Appraisers or the courts, and the ruling of the court on the first petition for review in the present case, that a valid reliquidation under the proviso of section 25 is as conclusive as the proclaimed value under the preceding part of the section. Collector v. Richards, 23 Wall. 246, 257, 259, 23 L. Ed. 95; Cramer v. Arthur, 102 U. S. 612, 619, 620, 26 L. Ed. 259; Hadden v. Merritt, 115 U. S. 25, 27, 5 Sup. Ct. 1169, 29 L. Ed. 323; U. S. v. Klingenberg, 153 U. S. 93, 14 Sup. Ct. 790, 38 L. Ed. 647. To determine the weight and force of this argument, it is well to point out the issue before the supreme court in those cases, and the scope of the ruling on the question of conclusiveness.

In Collector v. Richards, the Director of the Mint, acting within terms of the act of March 3, 1873, and in conformity with the powers conferred thereunder, estimated the pure-metal value of the franc of France at 19 cents and 3 mills, and this value was proclaimed by the Secretary of the Treasury on January 1, 1874. The court held that the act of March 3, 1873, repealed former acts relating to the value of the franc, and that the Collector's action in following the proclaimed value was correct. In construing the act of 1873, which in this part is identical with section 25 of the act of 1894, Mr. Justice BRADLEY, speaking for the court, said :

" The important words of the first section are as follows : ' The value of the foreign coin, as expressed in the money of the account of the United States, shall be that of the pure metal of such coin of standard value.' The plain meaning of this language is that the value of foreign coins in United States money shall be measured by the amount of pure metal contained therein when of standard value ; that is, when of the weight and fineness required by the laws and regulation of the country where they are produced. * * * The true method of comparing their money of account with ours, when both are based on actual coin, is to compare the standard coins of the two countries in a perfect state, and to ascertain the actual amount of pure metal in each. This is the result at which Congress seems to have arrived, and, as we think, wisely." 257 Wall. 257, 259, 23 L. Ed. 95.

Cramer v. Arthur also arose under the act of 1873. The Director of the Mint, in conformity with the statute and the method therein

prescribed, estimated the values of foreign standard coins in United States money, and these values were duly proclaimed by the Secretary of the Treasury. The pure-metal value of the Austrian florin was fixed at 47.60 cents. The importer sought to go behind this value, and show a different value. This was refused on the ground that the proclaimed value was conclusive. In the opinion of the court Mr. Justice BRADLEY said:

"The plaintiff seeks to go behind this valuation, and to show that at the time of the purchase of the goods the value of the silver florin in Vienna, as quoted in the papers, and as exhibited by the actual rate of exchange, was less than 47.60 cents, namely, 45.60 cents, and that the value of the paper florin was 43.71 cents. This, we think, the plaintiff cannot be allowed to do. The proclamation of the Secretary and the certificate of the Consul must be regarded as conclusive. In the estimation of the value of foreign moneys for for the purpose of assessing duties there must be an end to controversy somewhere. When Congress fixes the value by a general statute, parties must abide by that. When it fixes the value through the agency of official instrumentalities, devised for the purpose of making a nearer approximation to the actual state of things, they must abide by the values so ascertained. If the currency is a standard one, based on coin, the Secretary's proclamation fixes it; if it is a depreciated currency, the parties may have the benefit of a consular certificate. To go behind these, and allow an examination by affidavits in every case, would put the assessment of duties at sea. It would create utter confusion and uncertainty. * * * It is of the utmost consequence to the government, and it is, on the whole, most beneficial to importers, that the value of foreign moneys should be officially ascertained, and that they should be fixed by a uniform method or rule." 102 U. S. 619, 620, 26 L. Ed. 259.

Hadden v. Merritt likewise arose under the act of 1873. Here, also, the Director of the Mint had estimated the pure-metal values of foreign standard coins, which were duly proclaimed by the Secretary of the Treasury. The invoices of the merchandise were made out in Mexican dollars. It was held that the proclaimed value was conclusive upon custom-house officers and collectors, and could not be impeached by evidence showing that the Director of the Mint had made a mistake or miscalculation in his estimate by expressing the value of the Mexican dollar in the silver dollar of the United States, and not in the standard gold dollar. In that case Mr. Justice MATTHEWS, speaking for the court, said:

"The value of foreign coins, as ascertained by the estimate of the Director of the Mint and proclaimed by the Secretary of the

Treasury, is conclusive upon custom-house officers and importers. No errors alleged to exist in the estimate, resulting from any cause, can be shown in a judicial proceeding to affect the rights of the government or individuals. There is no value, and can be none, in such coins, except as thus ascertained; and the duty of ascertaining and declairing their value, cast upon the Treasury Department, is *the performance of an executive function, requiring skill and the* exercise of judgment and discretion, which precludes judicial inquiry into the correctness of the decision. If any error in adopting a wrong standard, rule, or mode of computation, or in any other way, is alleged to have been committed. there is but one method of correction. That is to appeal to the department itself. To permit judicial inquiry in any case is to open a matter for repeated decision, which the statute evidently intended should be annually settled by public authority; and there is not, as is assumed in the argument of the plaintiff in error, any such positive and peremptory rule of valuation prescribed in the statute as serves to limit the discretion of the Treasury Department in making its published estimate, or would enable a court to correct an alleged mistake or miscalculation. The whole subject is confined by the law exclusively to the jurisdiction of the executive officers charged with the duty, and their action cannot otherwise be questioned." 115 U. S. 27, 28, 5 Sup. Ct. 1170, 29 L. Ed. 333.

U. S. v. Klingenberg arose after the passage of the customs administrative act of June 10, 1890 (26 Stat. 131). The Director of the Mint, in conformity with the act of 1873. had estimated the pure-metal value of foreign standard coins, and such values were duly proclaimed by the Secretary of the Treasury on July 1, 1892. In reducing the currency of the invoices into United States money, the Collector estimated the florin at $0.482, which was the proclaimed value of the gold florin. The importer protested against this action, insisting that the Collector should have adopted the silver florin as the standard value, it having been referred to in the proclamation as the "nominal standard." Having first determined that the proper construction of the proclamation required the Collector to adopt the gold florin as the pure metal and better standard, rather than the silver florin, or "nominal standard," the court held that "the Collector's action in adopting the value of the gold florin at the estimate fixed therein was not subject to review by the Board of General Appraisers, under the principle laid down in the authorities already referred to." 153 U. S. 100, 14 Sup. Ct. 793, 38 L. Ed. 647. These authorities were Collector, etc., v. Richards, and the other cases already discussed.

In all these cases it will be observed that the Director of the Mint, acting within the scope of the powers conferred by statute, made his estimates on the pure-metal basis. It is manifest, therefore, that the rule of conclusiveness laid down in these cases goes to this extent, and no further: Where the pure-metal values of foreign standard coins as provided by the statute have been estimated by the Director of the Mint and proclaimed by the Secretary of the treasury, such values are conclusive, and cannot be impeached by evidence of mistake or miscalculation. In other words, the pure-metal estimate by the Director of the Mint, as a fact found, is final, and the Collector's action in conformity with such finding is not subject to judicial review, either under the old law, where the importer brought suit against the Collector in the circuit court to recover the duties paid, or under the customs administrative act of 1890, where an appeal is taken from the Collector's decision to the Board of General Appraisers. Assuming the word "value" in the proviso of section 25 to mean "value in pure metal," as the court has already determined, the doctrine of conclusiveness applied to reliquidations goes to this extent, and no further: The order for reliquidation of an entry by the Secretary of the Treasury upon evidence satisfactory to him, based on the required difference between the pure-metal value of the foreign money specified in the invoice and the proclaimed value, is conclusive, and the action of the Collector thereunder is not reviewable by the Board of General Appraisers or the courts.

But this is not the issue presented in the case at bar. The importers are not seeking to impeach the order for reliquidation by evidence that the Secretary's finding of fact respecting the difference between the pure-metal value of the rupee and its proclaimed value at the date of the consular certifications was erroneous. There is no such question involved in the present case. On the contrary, it is stipulated that the order for reliquidation was not based upon any difference in metal values, and that the pure-metal value of the rupee on the dates specified was substantially the same as the proclaimed value. The case now presented raises no question of fact, but only questions of law. The fundamental inquiry has reference to the power of the Secretary, under the proviso, to make the order in question; and this court having determined that the proviso does not authorize him to make such an order, the specific question under discussion is whether, under such circumstances, the order is unimpeachable. Is an order for reliquidation, founded upon a wrong

interpretation of the statute, conclusive, and the Collector's action thereunder not subject to review? Can the Secretary choose any standard of value for the foreign coin he pleases,—as, for example, the exchange value,—and will such action be final, although it is outside of the authority and jurisdiction conferred upon him by the proviso? Can the Secretary first adopt an illegal standard of value, and then make an offer or finding based upon such illegal standard, which cannot be impeached? If the doctrine of conclusiveness goes to this extent, then the importer is no longer governed by the laws which Congress enacts, but by the Secretary's interpretation of them; and the result might be that under the form of reliquidation the pure-metal rule of value in the assessment of duties, which has prevailed since the origin of the government, may be to a large extent nullified. In Greely v. Thompson, 10 How. 225, 234, 13 L. Ed. 397, the supreme court said:

"The orders as well as the opinions of the head of the Treasury Department, expressed in either letters or circulars, are entitled to much respect, and will always be duly weighed by this court; but it is the laws which are to govern, rather than their opinions of them; and importers, in cases of doubt, are entitled to have their rights settled by the judicial exposition of those laws, rather than by the views of the department."

Alleged errors of judgment or of fact, or alleged mistakes or miscalculations, committed by a government officer when acting within the authority conferred by law, are very different in principle from alleged errors springing from a misinterpretation of the law and the adoption of a principle which is contrary to law. The finding by the Director of the Mint of the pure-metal value of foreign coins, as authorized by section 25, or the finding by the Secretary of the Treasury of the requisite difference between the pure-metal value of a foreign coin and the proclaimed value, as authorized by the proviso, is a very different thing from the finding by the Director of the Mint of the exchange value of foreign coins, not authorized by section 25, or the finding by the Secretary of the difference between the exchange value of a foreign coin and the proclaimed value, not authorized by the proviso. Suppose, for example, the Director of the Mint, in his estimate of July 1, 1898, in evidence in the present record, had said: "In pursuance of section 25 of the act of August 27, 1894, I present in the following table an estimate of the values of the standard coins of the nations of the world for the next quarter.

These estimates are not, as heretofore, based on the pure-metal value of such coins, but on their exchange value, as certified by consular certificate. This estimate is in accordance with the provisions of section 25 as I interpret them." And suppose these exchange values had been duly proclaimed by the Secretary of the Treasury, "to be followed in estimating the value of all foreign merchandise exported to the United States on or after July 1, 1898, expressed in any of such metallic currencies." Can it be presumed for a moment that such proclaimed values would be binding and conclusive upon all importers of foreign merchandise? In such a case the Director of the Mint manifestly has transcended the powers conferred upon him by section 25, which declares "that the value of foreign coin * * * shall be that of the pure-metal value." There is here a plain violation of the terms of the statute. The estimate has proceeded on a principle contrary to law. In attacking such an estimate the issue is simply one of law involving the power of the Director of the Mint under the statute. It is a question of illegal action, arising outside of authorized powers, and not of error or mistake committed within the scope of lawful authority. So in the case at bar, assuming the word "value" has the same signification in the proviso as in the body of the section, when the Secretary ordered the reliquidation of the entry in question on a basis other than the pure-metal value of the rupee, or the difference between its pure-metal value and the proclaimed value, he exceeded the powers conferred by statute. He adopted an unauthorized standard of valuation. He proceeded on a wrong principle, contrary to law. The Secretary of the Treasury, the Collector of Customs, the Commissioner of Patents, the officers of the land department, and all officers of the government charged with official duties, must proceed according to law. Within the scope of their statutory powers their acts may be final and conclusive, but acts which are based upon a wrong principle, contrary to law, or which flow from an assumption of authority or jurisdiction not conferred by statute, have never been held to be conclusive and unimpeachable. Some of the authorities are reviewed in the able opinion by Judge SOMERVILLE, speaking for the Board of General Appraisers, in the case at bar. The principle is so clear upon reason, and has been so often recognized, that it is unnecessary to refer to numerous cases. Under section 13 of the customs administrative act the decision of the Board of General Appraisers is made "final and conclusive as to the dutiable value" of imported merchandise. But in respect to such conclusiveness

Mr. Chief Justice FULLER, speaking for the court, in U. S. v. Passavant, said:

"While the general rule is that the valuation is conclusive upon all parties, nevertheless the appraisement is subject to be impeached where the Appraiser or Collector has proceeded on a wrong principle, contrary to law, or has transcended the powers conferred by statute." 169 U. S. 16, 21, 18 Sup. Ct. 219, 42 L. Ed. 644.

In Robertson v. Frank Bros. Co., 132 U. S. 17, 24, 10 Supt. Ct. 5, 7, 33 L. Ed. 236, the court said:

"But it is contended that the act of the Appraiser in making or requiring to be made, the additional charges for transportation and labor, was final and conclusive, and cannot be made the subject of inquiry. It is undoubtedly the general rule that the valuation of merchandise made by the Appraiser, unappealed from, to merchant appraisers, is conclusive. But whilst this is the general rule, it is subject to the qualification that if the Appraiser proceed upon a wrong principle, contrary to law, and this be made to appear, his appraisement is not unimpeachable. This qualification applies to the acts of many other officials charged with duties of a similar character."

In Muser v. Magone, 155 U. S. 240, 247, 15 Sup. Ct. 77, 80, 39 L. Ed. 135, the court said:

"Yet, though the valuation is final, and not subject to review and change and reconstruction by the verdict of a jury, it is open to attack for want of power to make it; as where the appraisers are disqualified from acting, or have not examined the goods, or illegal items have been added independent of the value. The principle applied in such cases is analogous to that by which the proceedings of a judicial nature are held invalid because of the absence of some strictly jurisdictional fact or facts essential to their validity."

In Shepley v. Cowan, 91 U. S. 330, 340, 23 L. Ed. 424, Mr. Justice FIELD, in the opinion of the court, when speaking of the decisions of the land office, said:

"The officers of the land department are specially designated by law to receive, consider, and pass upon proofs presented with respect to settlements upon the public lands, with a view to secure rights of pre-emption. If they err in the construction of the law applicable to any case, or if fraud is practiced upon them, or they themselves are chargeable with fraudulent practices, their rulings may be reviewed and annulled by the courts when a controversy arises between private parties founded upon their decisions; but,

for mere errors of judgment upon the weight of evidence in a contested case before them the only remedy is by appeal from one officer to another of the department."

See, also, Butterworth v. Hoe, 112 U. S. 50, 5 Sup. Ct. 25, 28 L. Ed. 656; Johnson v. Towsley, 13 Wall. 72, 20 L. Ed. 485; Moore v. Robbins, 96 U. S. 530, 535, 24 L. Ed. 848; Catholic Bishop of Nesqually v. Gibbon, 158 U. S. 155, 15 Sup. Ct. 779, 39 L. Ed. 931; Railroad Co. v. Forsythe, 159 U. S. 46, 61, 15 Sup. Ct. 1020, 40, L. Ed. 71.

The point now taken for the first time by the government that the action of the Collector is not a "decision" within the meaning of section 14 of the customs administrative act is untenable, because the "ascertainment and liquidation of duties" is plainly a "decision" within the meaning of the section.

With respect to section 2652 of the Revised Statutes, it may be observed that, although the Collector must carry into effect all instructions of the Secretary of the Treasury relative to the execution of the revenue laws, yet as to third persons the legality of the Collector's action is open to judicial review. Greely v. Thompson, 10 How. 225, 234, 13 L. Ed· 397; Tracy v. Swartwout, 10 Pet. 80, 95, 9 L. Ed. 354.

In conclusion, it would seem that this whole controversy must turn on the true construction of the word "value" in the proviso If the interpretation by the government be correct, and the word signifies exchange value, or any standard of value the Secretary may adopt, then the order for reliquidation, and the action of the Collector thereon, were legal, and conclusive on the importers. If, on the contrary, as we hold, the word "value" signifies pure-metal value, then the Secretary's order for reliquidation was beyond the scope of his authority, and contrary to law, and the action of the Collector was appealable to the Board of General Appraisers, and reviewable by this court, under sections 14 and 15 of the customs administrative act.

For these reasons the decision of the Board of General Appraisers must be affirmed. Decision affirmed.

9.

The U. S. Circuit Court of Appeals in Beebe's second case (122 Fed. Rep., 762—March 10, 1903).

PUTNAM, Circuit Judge. This is an appeal from a decision of the Circuit Court in a customs case, made in accordance with section 15 of an act entitled "An act to simplify the laws in relation to the collection of revenues," approved June 10, 1890, c. 407 (26 Stat. 138). The decision of the Circuit Court was in favor of the importers, and the United States appealed.

The case turns on the construction of section 25 of the act which went into effect August 27, 1894, entitled "An act to reduce taxation, to provide revenue for the government, and for other purposes." Chapter 349, 28 Stat. 552 [U. S. Comp. St. 1901, p. 2375] That is as follows:

"Sec. 25. That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint, and be proclaimed by the Secretary of the Treasury immediately after the passage of this act and thereafter quarterly on the first day of January, April, July and October in each year. And the values so proclaimed shall be followed in estimating the value of all foreign merchanise exported to the United States during the quarter for which the value is proclaimed, and the date of the consular certification of any invoice shall, for the purposes of this section, be considered the date of exportation: provided, that the Secretary of the Treasury may order the reliquidation of any entry at a different value, whenever satisfactory evidence shall be produced to him showing that the value in United States currency of the foreign money specified in the invoice was, at the date of certification, at least ten per centum more or less than the value proclaimed during the quarter in which the consular certification occurred."

All the questions involved in this appeal turn on the rules of statutory construction, and the application thereof. The learned Judge of the Circuit Court considered them all carefully. So far as they are not discussed in this opinion, his reasoning and conclusions are accepted by us, and need no addition nor explanation. The main question arises in the following manner:

The importations in issue were of merchandise purchased at Cal-

cutta, and invoiced there in rupees in August, 1898. The bullion value of the rupee at that time, in accordance with the tabulation of the Director of the Mint provided by law, was 19 cents and 9 mills, while its market value at Calcutta, and its value then and there as currency, was 32 cents 1 mill and one-tenth of a mill, being an appreciation of over 60 per cent. This came about in a way quite unexampled in the history of foreign currencies with which the United States have had to deal, and subsequently to the act of 1904.

As is well known, the historical currency of India is in silver rupees, which have there been legal tender for a long period. The only gold currency known there in matters of account with foreign peoples is the English sovereign. The rupee had been the principal coin, and the sovereign the exceptional one. Previous to June, 1893, the mints of India had been bound by law to the free public coinage of silver into rupees, and therefore the rupee circulated at its bullion valae. The legislation of that date closed the mints. For a time thereafter, however, the rupee continued to fall as its bullion value decreased. But it subsequently rose in value, and since January, 1898 (being the year in which the merchandise in question was invoiced), it has been practically stable in mercantile transactions at 32 cents 1 mill and one-tenth of a mill. In 1899, by legislation, the British sovereign was made legal tender in India at the ratio of 15 rupees to the sovereign; thus permanently fixing the currency value of the rupee at substantially the figure which it reached in 1898.

Thus it will be seen that the silver rupee, like our silver dollar, had at the time this merchandise was invoiced a practical value as legal tender far in excess of the bullion value at which, according to law, it was rated by the Director of the Mint; and these changes in value of the rupee accrued after the act of 1894 went into effect. Previous to that act there were no differences with regard to the rupee of the character which we have described as existing in 1898. The prior differences were such as arose from fluctuations of the marketable price of silver. These, except in case of violent changes, would have been approximately and sufficiently provided for by the quarterly determinations of the Director of the Mint. But the fluctuations of the bullion value of the rupee, corresponding to the fluctuations of the market value of silver, were rapid and numerous about and just prior to the passage of the act of 1894. It is true that there had been for some years prior to 1892 a gradual diminution in the market value of silver; but during 1892, 1893, and

1894, it lost fully 50 per cent., so that, while its commercial ratio with reference to gold was represented in 1891 by 20.92, in 1894 it was represented by 32.56. Without going into the details of these fluctuations, it is apparent that at times they must have been violent during the periods prescribed by law for the Director of the Mint. Indeed, in 1893, for some single calendar months, they were more than 20 per cent. of the bullion value of the rupee.

Of course, importations from every country where the basis of the currency was a silver coinage were involved in the same difficulties, growing out of the rapid fluctuations of bullion values immediately prior to the passage of the act of 1894, as those described in connection with the Indian rupee. It is not necessary, however, to go into details of other foreign currencies, or to describe the extent to which they affected the mass of importations, because it is apparent from what we have already said that there was ample occasion for the legislation of 1894 in question in the fluctuations of the bullion value of silver, and therefore no necessity for looking for other inducements thereto.

The question which we have to consider is whether section 25 of the act of 1894 is to be regarded as satisfied by having reference to the state of things existing when it was passed; that is to say, the violent fluctuations in the marketable value of silver, and correspondingly in the bullion value of rupees, which marked that period, or whether it is to be construed so as to cover subsequent differences between the intrinsic worth of the rupee and its worth as legal tender and as money of account. In other words, claiming to proceed under the authority of the proviso in section 25, the Secretary of the Treasury ordered the reliquidation of the entries of this merchandise without regard to pure-metal values, and based on the legal-tender value of the rupee at 32.11; and the question is whether, as a matter of law, this was justified thereby.

Prior to the act of March 3, 1873, c. 268 (17 Stat. 602), as well observed in the opinion of the learned Judge of the Circuit Court, the values of foreign coins for custom purposes were fixed arbitrarily at different times by different statutes; each statute relating to one or more coins. The first section of that act reads as follows:

"That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the Director of the Mint, and be proclaimed on the first day of January by the Secretary of the Treasury."

The law conformed to the letter of this provision of statute until the act of 1894 in question here, though modified to require quarterly estimates. This act, being a revenue bill, originated in the House which gave passage to the first portion of section therein; repeating, with the modification of "quarterly" instead of "annually," the phraseology of the act of March 3, 1873, and containing nothing more. The balance of the section, as it now stands, was incorporated into it by the Senate on the recommendation of its finance committee; but no explanation thereof can be found in any report of that committee, or in the debates in the Senate or the House.

Under these circumstances, several rules of construction have been pressed on us as solving the question before us, but none of them are of commanding force. In fact, since legislation has grown to such enormous proportions, the intent is sought for without controlling regard for artificial rules. This has gone so far that even the notion of legislative omniscience, formerly adhered to so strictly that every word was assumed to have a significance of its own, has broken down, so that Congress is now admitted to express itself tautologically. Pirie v. Chicago Title Company, 182 U. S. 438, 444, 21 Sup. Ct. 906, 45 L. Ed. 1171. With this has disappeared the last of all of the rules, in the sense that any undertook to put the courts under subjection with regard to the construction of statutes. In like manner, there has been a modification in the application of the old rule that a proviso in a section of a statute must be accepted as carved out of the principal matter thereof. Nevertheless the rule is of value, and it certainly has weight in the case at bar.

But where the language of a statute is so doubtful as to require and permit construction, the most natural, and therefore the most persuasive, rules are, first, the fifth given by Blackstone, following Lord Coke, that "the most universal and effectual way of discovering the true meaning of a law, when the words are dubious, is by considering the reason and spirit of it, or the cause which moved the Legislature to enact it." Commentaries, vol. 1, p. 61. The second is the unavoidable rule that "where a particular construction of a statute will occasion great inconvenience, or produce inequality and injustice, that view is to be avoided if another and more reasonable interpretation is present in the statute." Knowlton v. Moore, 178 U. S. 41, 77, 20 Sup. Ct. 747, 44 L. Ed. 969. The first of those is the safer, because it is the universal rule of interpretation, applied to every instrument, that whosoever assumes to con-

strue it must put himself in the position of the parties at the time the instrument was executed; and the application of the second involves a determination of inconveniences, inequalities and injustices, the apparent proportions of which experience shows vary extremely according to the tribunals attempting to weigh such elements, and more especially according to the times when the attempts are made. This rule, therefore, is peculiarly subject to the remark of the Supreme Court, many times repeated, "that no mere omission, no mere failure to provide for contingencies which it may seem wise to have specifically provided for, justify any judicial addition to the language of the statute." Pirie v. Chicago Title Company, 182 U. S. 438, 21 Sup. Ct. 906, 45 L. Ed. 1171, *ubi supra*, at page 452, 182 U. S., page 912, 21 Sup. Ct., and 45 L. Ed. 1171.

A striking illustration of the force of the primary rule that, in order to interpret a doubtful instrument or statute, it is necessary to put one's self in a position contemporaneous therewith, is found in connection with the fourteenth amendment. That contained clear expressions, in positive language, so that its application, in the end, proved to be very broad. With reference to all the articles of amendment subsequent to the War of the Rebellion, the Supreme Court said in Slaughter-House Cases, 16 Wall. 36, 72, 21 L. Ed. 394, "Both the language and the spirit of these articles are to have their fair and just weight in any question of construction." But having already observed that all of them were especially addressed to the grievances of the colored race, it added, in limitation of what we have already quoted, as follows:

"But what we do say, and what we wish to be understood, is that, in any fair and just construction of any section or phrase of these amendments, it is necessary to look to the purpose which we have said was the pervading spirit of them all, the evil which they were designed to remedy, and the process of continued addition to the Constitution, until that purpose was supposed to be accomplished, as far as constitutional law can accomplish it."

If the phraseology of the statute which we have now under construction contained clear and positive expressions, analogous, in this respect, to the fourteenth amendment, we might be obliged, notwithstanding the peculiar circumstances under which the statute was enacted, to give it a sweeping application, altogether beyond those circumstances, but such is not the fact. If the proviso, instead of using the word "money," had used the word "coin," which appears at the opening of section 25, the statute would be clear,

and there could be no question that the construction claimed by the importers should be given to it; yet the interposition of the word "money" in lieu of the word "coin," especially in view of the method, already explained, in which the section was added to after it passed the House, is far from indicating that there was any legislative intention of using one word in any different sense from that in which the other is necessarily understood.

Conforming to the statute, these invoices were expressed in the currency "actually paid for the merchandise by the purchaser." Act June 10, 1890, c. 407, § 3 (26 Stat. 131). As, when the invoices in issue were made, there was no money of account in India expressed in rupees, other than the silver rupee, it follows that in this particular case "the foreign money specified in the invoice" called for by the proviso in section 25 was the silver rupee, so that even if, under some circumstance, the word "money," in that proviso, could theoretically be construed as meaning anything else than "coin," it cannot mean anything else with reference to the particular case with which we have to deal. Moreover, in accordance with settled usage, Webster's Unabridged Dictionary gives as the first definition of "money" "coin, stamped metal," although the secondary meaning of the word is said to include "any currency usually and lawfully employed in buying and selling as the equivalent of money."

"Here, therefore, arises the doubt as to the true construction of the statute in question. For solving this doubt, we have no suggestions in the congressional proceedings, which are often of use as such. We have, for what it is worth, the rule to which we have referred with regard to the construction of provisos. This undoubtedly weighs in favor of the importers, as was stated by the learned Judge in the Circuit Court, and as this aid to construction was explained in United States v. Dickson, 15 Pet. 141, 165, 10 L. Ed. 689, and repeated in Ryan v. Carter, 93 U. S. 78, 83, 23 L. Ed. 807. That was to the effect that the general rule is "that a proviso carves special exceptions only out of the body of the act." So much of that portion of section 25 which came in by amendment in the Senate as precedes the proviso was clearly expressed to change the law with reference to the time at which the value of foreign coins is to be ascertained. Heinemann v. Arthur's Executors, 120 U. S. 82, 85, 7 Sup. Ct. 446, 30 L. Ed. 605. But the use of the word "money" in the proviso, in lieu of the word "coin" in the earlier part of the section, cannot, in any view, be held as of so decisive a character as

to avoid the application of the rule of construction last referred to, even under the modern practice with reference to all such rules.

The reason for this proviso can be suggested only by the fact of the numerous violent fluctuations in the market value of silver, and in the corresponding market value of rupees, which we have fully explained, and this brings us under the leadership of the safest guide for the construction of a statute, already referred to; that is, the consideration of the causes which moved the Legislature. The circumstance that the legal-tender value of the rupee far exceeded its bullion value, which is now presented, did not exist when the act of 1894 was passed, and it could not have been in the contemplation of Congress. In fact, it may be said never to have previously existed, so far as known to our customs system. Some trace of it is indicated in the circulating money of Puerto Rico in February, 1895. Circular letter from the Acting Secretary of the Treasury, Synopsis of Treasury Decisions, 15606. It there appears that, on account of the prohibition of the importation of Mexican dollars into Puerto Rico, those dollars had in that island in February, 1895, a value greater than that of the pure silver contained therein. The circular says that the department had been so advised by the Director of the Mint; and its whole tenor leads to the inference that it was a fact which had either just been developed, or was then first brought to the attention of the United States. Therefore this fact not only succeeded the legislation in question, but it was a comparatively minor one, while the violent fluctuations of silver affected the entire commercial world; and it cannot reasonably be doubted that the purpose of Congress in section 25, under consideration, was with reference thereto. As that purpose is clearly accomplished, it is not necessary to strain a doubtful expression to meet the issue before us.

Two minor considerations strengthen this view of the statute: First, the Treasury Department, when everything was fresh, and the circumstances under which the legislation of 1894 was enacted must have been known, made no pretense to give the construction to this statute which the United States now assert. It met the Puerto Rico difficulty, as is shown by the circular letter of February, 1895, by reference solely to section 2903 of the Revised Statutes [U. S. Comp. St. 1901, p. 1922], providing especial relief as to duties on merchandise the original cost of which was in a depreciated currency. This view was re-inforced by a letter from the Acting Secretary of the Treasury to the Collector of Customs at Bos-

ton, of May 8, 1895. Synopsis of Decisions, 16037. Indeed, it is apparent from the record in the case, and from the opinion of the learned Judge in the Circuit Court in United States v. Newall, 91 Fed. 525, that even then the same position was taken by the department, enforced by its letter to the Collector of Customs at Boston of May 12, 1896. While this construction of this statute by the Treasury did not continue for so long a period that it has direct weight under the ordinary rule with reference to the practical effect given to legislation by the executive departments, yet it supports strongly the proposition which we have sought to make clear—that the historical circumstances out of which the legislation arose, and which it had in contemplation, were not of the character presented by the case at bar.

Further, it is to be considered that section 2903 of the Revised Statutes cannot be held to have been repealed by section 25 of the act of 1894. That it was not so repealed by the act of 1873, to which we have referred, was clearly assumed in The Collector v. Richards, 23 Wall. 246, 23 L. Ed. 95, and apparently so held in Cramer v. Arthur, 102 U. S. 612, 26 L. Ed. 259. That the Treasury Department regards section 2903 as still in force is apparent from Customs Regulations 1899, art. 409, which continues to provide for proper proceedings thereunder. Inasmuch as section 25 applies not only when there is an appreciated currency, but also when there is a depreciated one, using the words "more or less," it would follow that, if the present position of the United States is correct, there would be, with reference to depreciated paper currency, two radically distinct and inconsistent methods of liquidating entries, which certainly could not be accepted as the fact.

Thus it follows that everything which we have to guide us in the construction of the statute in question leads to the conclusion reached by the Circuit Court, unless it can be said that there is to be an exception in favor of the rule for avoiding great inconvenience, inequality, or injustice, referred to in Knowlton v. Moore, 172 U. S. 41, 77, 20 Sup. Ct. 747, 44 L. Ed. 969, *ubi supra*. As the conditions existed at the date of these invoices, a merchant importing skins or other merchandise from Italy, invoiced in lire, the equivalent of French francs, would, under our construction of the statute, have paid sixty per centum more duty than the merchant purchasing and invoicing exactly the same class of merchandise at Calcutta. Not only would this be an injustice, but, if it had a considerable place and became chronic, it might well be held to con-

travene the "favored nation" clauses found in so many of our treaties. Whether such conditions have ever existed has not been brought to our attention in such manner as to enable us to say positively that they could take on the features which we have suggested. Certain it is, however, that as these contingencies could not have been anticipated by Congress in 1894, their possibility affords no substantial assistance in considering a statute passed at that date. If they now exist, or ever have existed, it has been at all times in the power of Congress, by enacting a very few words into a statute, to afford a remedy.

The United States raise a question of the jurisdiction of the Board of General Appraisers. On that point we need add but very little to what was said in the Circuit Court. The act of June 10, 1890, c. 407 (26 Stat. 131), is the law which established this tribunal. The United States rest on the words "decision of the Collector," found in section 14, and they claim that in the case at bar the "decision" was not that of the Collector of Boston, but of the Secretary of the Treasury. This is a narrow construction of the expression, because the ultimate tribunal which reliquidated was not the Secretary, but the Collector, so that at common law mandamus would lie only against the latter, and not against the former. This position, moreover, begs the question, because, if the action of the Secretary was unlawful, as we hold it was, the Collector could rest nothing done by him on that action, and whatever he did was his own.

The United States rely on United States v. Klingenberg, 153 U. S. 93, 14 Sup. Ct. 790, 38 L. Ed. 647. The opinion in that case is a very elaborate one, growing out of lack of compliance with the statutes on the part of the importer at the very origin of the transaction; that is when he took his invoice. Several things said in it may be regarded as dicta; but, however that may be, United States v. Passavant, 169 U. S. 16, 18 Sup. Ct. 219, 42 L. Ed. 644, must be held to broaden the view of the jurisdiction of the Board of General Appraisers when there is involved a mere question of law, such as arises at bar on the letter of instructions from the Secretary to the Collector.

A useful discussion of the general power of the courts to revise questions of law arising on the face of proceedings by executive departments will be found in American School of Magnetic Healing v. McAnnulty, 187 U. S. 94, 23 Sup. Ct. 33, 47 L. Ed. ——. We also

refer to Hyatt v. Corkran, 188 U. S. 691, 23 Sup. Ct. 456, 47 L. Ed. ——.

We are of opinion that the conclusion of the Circuit Court was correct. The judgment of the Circuit Court is affirmed.

10.

The General Appraisers' decision in the case at bar, is found at record, pp. 14–20.

11.

The U. S. Circuit Court in the case at bar rendered decision pro forma, sustaining the General Appraisers.

12.

The U. S. Circuit Court of Appeals in the case at bar (129 Fed. Rep., 33—March 14, 1904).

BOYD, District Judge. The facts in this case are substantially as follows: Stone, the appellant, is Collector of Customs for the district and port of Baltimore, Md. In June, 1900, Whitridge, White & Co., the appellees imported from India into the port of Baltimore a cargo of gunny bagging. The gunnies were purchased by the importers of Calcutta, and were invoiced in rupees, which is a silver coin of India. The Barrowmore, in which the gunnies were brought into this country, arrived in Baltimore on the 18th of June, 1900, and the goods were entered for consumption on that day. On the 11th of July, 1900, the Collector of Baltimore liquidated the duty on the said goods by converting into United States gold dollars the rupees of the invoices at the rate of 32 cents for each rupee. To this liquidation the importers entered a protest in writing on the 16th day of July, 1900, and on the 29th of May, 1901, the Collector, acting under instructions from the Secretary of the Treasury, reliquidated the duty on said goods by converting into United State gold dollars the rupees of the invoices at the rate

of 20.7 cents for each rupee. That thereafter, on the 12th day of June, 1901, the Collector again reliquidated the invoices, and placed the value of the rupee at 32 cents. This last action of the Collector was in response to instructions from the Secretary of the Treasury, relative to these invoices, as follows:

"In this regard I have to inform you that satisfactory evidence has been produced, to the Secretary of the Treasury, showing that the value in United States currency, of the foreign money of the invoices, namely, the rupee of India was 32 cents at the date of certification, which is ten per cent. more than the value proclaimed during the quarter in which the consular certification occurred. In view of the fact stated, you are hereby directed to reliquidate the entries hereinbefore mentioned, on the basis of this latter value, under the authority conferred upon the Secretary of the Treasury, by the proviso to Section 25 of the act of August 28th, 1894."

To this reliquidation the appellees duly filed a protest in writing with the Collector at Baltimore. The goods imported are dutiable at five-eighths of a cent a pound upon the weight as taken in the reliquidation of June 12, 1901, and in addition thereto at the rate of 15 per cent. of their dutiable value. It is admitted that the metallic value of the rupee on April 19, 1900, the date on which the invoices in this case were certified, was substantially 20.7 cents, and at no time between the 1st of April, 1900, and the 1st of July, 1900, did the metallic value of the rupee even approximate 32 cents. It is further admitted that the reliquidation made by the Collector on the 12th of June, 1901, to which the importers objected, and which is the basis of this proceeding, in which the Indian rupee was valued at 32 cents, was the exchange value of the rupee at the date of the certification of the invoices, as shown and attested by the certificate of the United States Consul General at Calcutta. On the 1st of April, 1900, acting under the authority of law, the Director of the Mint had estimated the metallic value of an Indian rupee to be 20.7 cents, and this valuation was duly proclaimed by the Secretary of the Treasury. The action of the Secretary of the Treasury in directing a reliquidation of the invoices upon which the present controversy arises was based upon an opinion of the Secretary that, after the estimate of the Director of the Mint, and the proclamation thereon, the value of the Indian rupee during the quarter had varied as much as 10 per cent.; that its value had appreciated this much, or more, and that the invoices of the gunnies imported by the appellees should be reliquidated for

duty at the exchange or commercial value of the Indian rupee, which was certified by the Consul, and not at the metallic value, which had been estimated by the Director of the Mint. As before stated, against the reliquidation of June 12, 1901, made by the Collector of Baltimore under the instructions of the Treasury Department, the appellees protested, and this protest, with the facts in the case, was submitted by the Collector to the Board of General Appraisers at New York. This Board rendered a decision adverse to the Collector, declaring, in effect, that the metallic, and not the commercial, value of the Indian rupee at the time of the invoices was the true basis of liquidation. From this decision the case was brought by petition on behalf of the Collector to the Circuit Court for the District of Maryland. The Circuit Court affirmed the decision of the Board of General Appraisers, and the Collector appealed to this court.

The appellant lays down two propositions, namely, that the liquidation of June 12, 1901, was the decision of the Secretary of the Treasury, and was final, and that the Board of General Appraisers had no jurisdiction to review it, The question here is, therefore, can these positions, or either of them, be maintained? We think not. The Customs Administrative Act of June 10, 1890, c. 407, § 14, 26 Stat. 137 [U. S. Comp. St. 1901, p. 1933], plainly provides that, when the Collector of Customs has liquidated invoices for duty the owner or importer may, after such liquidation, give notice in writing to the Collector of his objections thereto, and, if the merchandise is entered for consumption, shall pay the full amount of the duties and charges ascertained to be due thereon; and upon such notice and payment the collector shall transmit the invoice, and all the papers and exhibits connected therewith, to the Board of three General Appraisers, which shall be on duty at the port of New York, etc., which Board shall examine and decide the case thus submitted, and their decision, or that of a majority of them, shall be final and conclusive upon all persons interested therein. * * * Section 15 of said act provides for an appeal from the decision of the Board of General Appraisers to the Circuit Court of the United States on behalf of either party.

The appellant contends that the action submitted to the Board of General Appraisers was not that of the Collector of Customs at Baltimore, but was a decision of the Secretary of the Treasury, made in the discharge of the duties imposed upon him by law, and that the Board of General Appraisers has no authority in law to

review him. It is insisted on the part of the appellant that Congress could not have intended to submit the decision of the Secretary of the Treasury, upon matters in which the statute imposes upon him the responsibility of deciding, to review, and possibly reversal, by subordinate divisions of his own department. We cannot agree that in exercising the powers of review vested in the Board of General Appraisers by law the Board is a subordinate division of the Treasury Department. On the other hand, the members of the Board of General Appraisers are appointed by the President, by and with the advice and consent of the Senate, and, acting within its jurisdiction, the Board is an independent tribunal, empowered by law to pass upon certain controversies between the government and the importer, and in this respect the Board is no more subordinate to the Treasury Department than is any other court. As bearing upon this view, we may refer to the fact that by section 15 of the administrative customs act it is provided, among other things, that, if the Secretary of the Treasury is dissatisfied with the action of the Board, his only relief is by appeal to the Circuit Court of the United States. It may be well at this juncture to give the full text of section 25 of the act of Congress of August 28, 1894, c. 349, 28 Stat. 552, upon the construction of which the questions involved in this case depend. That section reads as follows:

"That the value of foreign coin, as expressed in the money of account of the United States, shall be that of the pure metal of such coin of standard value, and the values of the standard coins in circulation of the various nations of the world, shall be estimated quarterly by the Director of the Mint, and be proclaimed by the Secretary of the Treasury immediately after the passage of this act, and thereafter quarterly on the first day of January, April, July and October, in each year, and the values so proclaimed shall be followed in estimating the value of all foreign merchandise exported to the United States during the quarter for which the value is proclaimed, and the date of the consular certification of any invoice shall, for the purposes of this section, be considered the date of exportation: provided, that the Secretary of the Treasury may order the liquidation of any entry at a different value whenever satisfactory evidence shall be produced to him showing that the value in United States currency of the foreign money specified in the invoice was, at the date of certification, at least ten per centum more or less than the value proclaimed during the quarter in which the consular certification occurred."

In disposing of the questions presented, and especially that in which it is insisted by the appellant that the reliquidation of June 12,

1901, was a decision of the Secretary of the Treasury, and therefore final, without power in the Board of General Appraisers or the courts to review it, it is perhaps as well to consider the reasons which must have led to the enactment of the law which we have just quoted, and by this method we may arrive at the true meaning of the legislation. We find that for many years in the administration of our tariff laws great difficulties had been encountered in so adjusting the value of goods purchased in foreign countries and invoiced in foreign money as to be altogether fair, in every instance, to the government and to the importer. Especially was this true of importations of goods which had been purchased in countries where silver coin was the standard money. This condition gave rise to disagreements between the government and the importers, and often the aid of the courts was invoked to relieve the situation. The Congress, no doubt appreciating existing conditions, undertook to set the matter at rest by the act of March 3, 1873, c. 268, 17 Stat. 602, by which it was enacted:

"That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value, and the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the Director of the Mint, and be proclaimed on the first day of January by the Secretary of the Treasury."

This act was plain, and there could be no doubtful construction of its terms. It provided that the metallic value of foreign coin should be estimated annually by the Director of the Mint, and proclaimed on the 1st day of January by the Secretary of the Treasury. When so estimated and proclaimed, the value of foreign coin for the purposes of liquidation of invoices of imported goods was settled, and had the force of a statute, which controlled the action of the Collectors and other officers of the customs in determining import duties, and it was in view of this statute that the decisions in Hadden v. Merritt, 115 U. S. 25, 5 Sup. Ct. 1169, 29 L. Ed. 333, and The United States v. Klingenberg, 153 U. S. 93, 14 Sup. Ct. 790, 38 L. Ed. 647, were made, as was also the decision in Cramer v. Arthur, 102 U. S. 612, 26 L. Ed. 259, that the valuations of foreign standard coins made by the Director of the Mint and proclaimed by the Secretary of the Treasury were conclusive and binding both on Collectors of Customs and on importers, and that evidence to show that such valuations were inaccurate was not receiv-

able. In the latter case the principle declared in Collector v. Richards, 23 Wall. 246, 23 L. Ed. 95, was cited and reaffirmed. These several decisions are upon the ground that the Director of the Mint, in basing his estimate upon the metallic value of foreign coin, had acted within the scope of the authority conferred upon him by the statute, and, having so acted, his finding of fact became the law as fully as if his estimate had been incorporated in the statute itself.

Section 25 of the act of August 28, 1894, excepting the proviso, was a substantial re-enactment of the law of 1873, the only change being that the Director of the Mint should make his estimates of the value of foreign coin quarterly, instead of annually, as provided in the previous law. And then comes the proviso:

"That the Secretary of the Treasury may order the liquidation of any entry at a different value, whenever satisfactory evidence shall be produced to him, showing that the value in United States currency of the foreign money specified in the invoice was, at the date of the certification, at least ten per centum more or less than the value proclaimed during the quarter in which the consular certification occurred."

That frequent fluctuations in the metallic value of foreign coins led to the act of 1894 would seem to be indisputable. The law as it stood since 1873 empowered the Director of the Mint to make his estimate of the metallic value of foreign coin on the 1st day of January in each year, but Congress saw the necessity of having this estimate made quarterly, instead of annually, but still adhered to the metallic value as the basis of the estimate. Then where can we find a reason to conclude that it was the intention of Congress to make a departure from the metallic principle which permeated its legislation, and confer upon the Secretary of the Treasury an exclusive power to arbitrarily adopt another basis? Is it not more in accord with the language of the statute, the purposes for which it was enacted, the conditions it was intended to meet, and fair construction, to hold that the proviso was inserted in the act simply to authorize the Secretary of the Treasury, in case there should be a variation in the metallic value of the foreign coin after the Director of the Mint had made his estimate at the first of the quarter, and before, by the terms of the law, he could make another estimate at the beginning of the next quarter, to order liquidations when it was made satisfactorily to appear to him that such variations in the metallic value to the extent of 10 per centum had taken place? If

such is not the law, then under the proviso of section 25 the Secretary of the Treasury is absolutely unrestrained. He is neither limited by the metallic value nor by the exchange value of the foreign coin, but he may, at his option, prescribe any value for foreign coin, and direct its use by officers of the customs in the invoicing of foreign goods for duty; and, following out the contention of the appellant in this case, the importer would have no remedy whatever, either through the Board of General Appraisers, or the courts. Certainly Congress did not intend to confer such unbridled power upon the head of an executive department.

This question is admirably discussed in two very learned opinions recently delivered, the one in the Circuit Court of the United States for the District of Massachusetts, in the case of The U. S. v. Beebe, 117 Fed. 670, and the other in the same case in the Circuit Court of Appeals for the First Circuit, 122 Fed. 762, 58 C. C. A. 562. It is not necessary for us to go further than to cite the opinions in these two cases, which we think declare the law as it is, and proceed upon a line of reasoning which leads irresistibly to the conclusion that, when the Secretary of the Treasury undertook to order a reliquidation of the foreign invoices for duty upon a basis other than the metallic value of the foreign coin in which such invoices were certified, he went beyond his authority, and his act had no legal effect.

We then come to the consideration of the question as to whether the decision of the Secretary of the Treasury and the subsequent action of the Collector of Customs thereunder can be reviewed by the Board of General Appraisers and by the courts. We cannot put this question more forcibly than by quoting from the comprehensive opinion of Judge COLT in the Beebe Case, 117 Fed. 670, the following language:

"Can the Secretary choose any standard of value for the foreign coin he pleases—as, for example, the exchange value—and will such action be final although it is outside of the authority and jurisdiction conferred upon him by the proviso? Can the Secretary first adopt an illegal standard of value, and then make an order or finding based upon such illegal standard which cannot be impeached? If the doctrine of conclusiveness goes to this extent, then the importer is no longer governed by the laws which Congress enacts, but by the Secretary's interpretation of them; and the result might be that under the form of reliquidation the pure metal rule of value in the assessment of duties, which has prevailed since the origin of the government, may to a large extent be nullified."

It is conceded that, if the ascertained metallic value of the silver rupee of India, either that made by the Director of the Mint at the first of the quarter and proclaimed by the Secretary, or a metallic value determined by the Secretary under the proviso of section 25, had been adopted by the Collector, in making the reliquidation of invoices of the appellees' goods on the 12th of June, 1901, under the decisions before cited, such action by the Collector would have been conclusive. But the Collector did not do this. On the other hand, acting under instructions from the Secretary of the Treasury, he adopted as a basis of liquidation the commercial value of the rupee, as certified by the American Consul at Calcutta, at the date of the invoices. The instruction was the act of the Secretary, but the liquidation ascertaining the dutiable value of the goods and determining the amount of duty to be paid by the importer was the act of the Collector. "The action of a Collector in declining to accept the proclaimed value of a foreign standard coin and in adopting another standard, thereby increasing the amount of duty on imported merchandise, does not relate to a disputed appraisement, but to the amount of duties; and under Customs Administrative Act June 10, 1890, §§ 14, 15, is reviewable on the protest of the importer by the Board of General Appraisers and the Circuit Court." U. S. v. J. Allston Newhall & Co. (C. C.) 91 Fed. 525. In the present case the Collector ignored the metallic value of the rupee—20.7 cents—which had been proclaimed for the quarter in which the importation of the goods was made, and adopted the exchange value of 32 cents, which appeared from the certificate of the Consul, and thus increased the amount of duty upon the importation. The principle declared in the Newhall Case, which we hold to be the law, applies here, and, in our opinion, the Board of General Appraisers and the Circuit Court of the United States had jurisdiction.

As bearing upon this point, and in entire accord with the position we take, we quote again from the learned opinion of the Circuit Court of Appeals for the First Circuit in the case of the United States v. Beebe & Sons, 122 Fed. 762, 58 C. C. A. 562, in which Judge PUTNAM, in delivering the opinion of the court, says:

"The United States raises a question of the jurisdiction of the Board of General Appraisers. On that point we need add but very little to what was said in the Circuit Court. The act of June 10, 1890, c. 407, 26 Stat. 131, is the law which established this tribunal.

The United States rests on the words 'decision of the Collector,' found in section 14, and they claim that in the case at bar the 'decision' was not that of the Collector of Boston, but of the Secretary of the Treasury. This is a narrow construction of the expression, because the ultimate tribunal which reliquidated was not the Secretary, but the Collector; so that at common law mandamus would lie only against the latter, and not against the former. This position, moreover, begs the question, because, if the action of the Secretary was unlawful—as we hold it was—the Collector could rest nothing done by him on that action, and whatever he did was his own."

The judgment of the Circuit Court is affirmed.

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Supreme Court of the United States.

OCTOBER TERM, 1904.

THE UNITED STATES,
Petitioner,

vs.

MORRIS WHITRIDGE and RICHARD J. WHITE,
Trading as Whitridge, White & Co.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

Brief for the Respondents.

C. G. Bradstreet, Walker and Centre Streets, N. Y.

In the Supreme Court of the United States,

OCTOBER TERM, 1904.

THE UNITED STATES,
Petitioner,

vs.

MORRIS WHITRIDGE and RICHARD J. WHITE,
trading as Whitridge, White & Co.,
Respondents.

BRIEF FOR RESPONDENTS.

Statement.

The firm of Whitridge, White & Co., imported at Baltimore, June 18, 1900, certain gunnies from India, and at once entered them at the custom house for duty purposes (Record p. 4). The duty prescribed by law on such gunnies was a compound one, partly *ad valorem* and partly otherwise (Tariff Act of 1897—30 Stats. 151,—Par. 341,) but with no part of the *rates* of duty are we concerned, save as the *ad valorem* part made the valuation of the goods a necessary factor in its reckoning.

Nor are we concerned with the entire matter of the valuation, for this involves two distinct parts, (1) the appraisement, or determination of the foreign market value of the goods, on which our statutes require that *ad valorem* duties must be reckoned, and which value they prescribe shall be fixed and determined in the currency of the exporting country—unless purchase was actually made in some other currency (Secs. 2 and 10 Act of June 10, 1890) and (2) the trans-

lation or reduction of the ascertained market value to its equivalent in our own money,—a purely clerical function, performed arithmetically by Collectors and their clerks, according to tables of such equivalents duly prescribed for their guidance, by statute or otherwise. Appraisal, on the other hand, is a matter of deliberate judgment as to market values ruling abroad, is confided to officials specially appointed for that function under the statutes, regulated by careful provisions of those statutes, and subject thereunder to a quasi-judicial review at the instance of either Collector or merchant (Sec. 13, Act of June 10, 1890). Appraisal in the present case was performed by the officials to whom that function pertains under the law; they found and reported the value correct, as shown by the invoice; there was no appeal taken from their finding by any party, and thus the appraisal was complete before the Collector begun the translation of the rupees at all.

With the market value of the gunnies, therefore, we are not concerned, but only with the translation as made by the Baltimore Collector, of this duly ascertained foreign market value of the gunnies, into an equivalent in United States currency.

The issue in this case is whether this translation was properly and legally made, as the petitioner says, or illegally, as the respondents say, and as the lower tribunals have decided.

The translation of foreign currencies has been closely regulated by statute, for over a century, and still is so. If the Collector's act was in accord with the statute, it is of course legal, but if it violated the statute, the courts below were right in overruling him, and must be affirmed.

The Statute as to Foreign Currencies, and the Official Proceedings to Give it Effect.

The statute as to currency valuations, current at the time in question, was Sec. 25, Act of August 28, 1894 (28 Stats. 509), and ran as follows:

> "That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the

Mint and be proclaimed by the Secretary of the Treasury immediately after the passage of this Act and thereafter quarterly on the first day of January, April, July and October in each year. And the values so proclaimed shall be followed in estimating the value of all foreign merchandise exported to the United States during the quarter for which the value is proclaimed, and the date of the consular certification of any invoice shall, for the purposes of this section, be considered the date of exportation: *Provided*, that the Secretary of the Treasury may order the reliquidation of any entry at a different value, whenever satisfactory evidence shall be produced to him showing that the value in United States currency of the foreign money specified in the invoice was, at the date of certification, at least ten per centum more or less than the value proclaimed during the quarter in which the consular certification occurred."

In accordance with this statute, the values of the standard foreign coins in circulation are estimated and proclaimed quarterly, the proclamation of April 1, 1900 (the exportation of the gunnies in suit having occurred on April 19, 1900—Record, p. 11, findings 1 and 5), being published as Treasury Decision No. 22,120, and containing, in a tabulated ascertainment by the Director of the Mint, covering the currency of many countries, alphabetically arranged, the following as to India:

Country.	Standard.	Monetary Unit.	Value in terms of U. S. Gold Dollar.	Coins.
India	Silver	Rupee	.207	Gold: mohur ($7.105). Silver: rupee and divisions.

A foot note appeared at the end of the table, reading as follows: "Value of the rupee to be determined by consular certificate" (finding 6).

The Secretary of the Treasury appended to this promulgation an order to all Collectors of Customs that the values so proclaimed

were " to be followed in estimating the value of all foreign merchandise exported to the United States on or after April 1, 1900, expressed in any such metallic currencies," but this was merely a setting forth of the express direction of the statute itself.

Concerning the foot note, and as it will presently appear that the Collector in fact determined the value of the rupees in this case by consular certificate, it may be well to say, in passing, that he did not do so in pursuance of the foot note; nor did the Mint Director make any such foot note at the time when the law of 1894 was passed, nor until April, 1897 (T. D. 17973); that no weight has been laid on it throughout this or any of the cases on this issue; that the Secretary, as above stated, did not direct Collectors to follow it, but to follow the proclaimed values in the table; and that the making of any such note or comment was manifestly beyond the authority of the Director of the Mint, its purport being not in explanation, but in contradiction of the proclaimed values and of the law.

U. S. vs. Goodsell Co., 91 Fed. Rep. 519 (C. C. A.) and cases therein cited.

Counsel for the Government do not in their brief or argument contend that the foot note was warranted by law, or that it is of any legal force.

Such being the statute and the proceedings had under it, the respondents assert that the Collector, in translating the rupees of their invoice, after that had been appraised as properly stating the market value of the goods in Indian currency, was bound to translate them at 20.7 cents each and to assess the *ad valorem* portion of the duty on only the resulting sum.

The actual Procedure of the Collector with regard to the Invoice in controversy.

What the Collector actually did, was to translate them at 32 cents each (Record, p. 12, finding 7), *following in this regard a certificate of the United States Consul, appended to the invoice in question*, which declared " that the exchange value of the rupee, in which

currency the annexed invoice of merchandise is made out, is at this date 32 cents, estimated in United States gold dollars" (p. 11, finding 5). He thus reached a valuation about 54 per cent. greater than would have resulted from following the proclaimed value, and on this sum the *ad valorem* duty was reckoned.

In thus departing from the requirements of Sec. 25 of the Act of 1894, the Collector was following certain rulings of the Treasury Department, published for the guidance of all Collectors, in 1897, and as these rulings are the basis for all the proceedings in the present and all the other cases as to the valuation of Indian rupees, they are hereto appended in full:

T. D. 17766. "*Value of rupee of India, as applied to bales of tanned skins imported from Madras, India—Appeal from decision of Board, which has no jurisdiction in the case.*

"TREASURY DEPARTMENT, February 3, 1897.

"SIR:—The Department is in receipt of your letter of the 27th ultimo, inviting attention to the decision of the Board of General Appraisers (not published), dated the 9th ultimo, in the matter of protest No. 31408 B-347, of J. Alston Newhall & Co., involving the question as to the amount of duty chargeable on certain 25 bales of tanned skins from Madras, India, entered at your port during May, 1896.

"It appears that the merchandise in this case was shipped from Madras, India, during the first quarter of the year, 1896, for which period the value of the rupee as declared by the Director of the Mint, was equivalent to 23-3/10 cents in United States currency. In transmitting the invoices, however, the United States consular agent at Madras attached a certificate stating the demand rate of exchange between Madras and London, and between New York and London at the time of shipment, from which certification it appeared that the actual value of the rupee at the time of shipment of the said merchandise, was 28-5/10 cents. You were accordingly instructed to assess duty on the basis of the valuation of the rupee (28-5/10 cents) as shown by the consular certificate attached to the invoice.

"The Board of General Appraisers finds that the certificate of the consular officer is not in due form and that it is therefore null and void, and that the invoice should have

been treated as if there were no currency certificate accompanying it; the Board further holds that the value of the rupee should have been estimated as equivalent to 23-3/10 cents, in accordance with the value as declared by the Director of the Mint under date of January 1, 1896.

" In reply to your request for further instructions in this matter, I have to state that this Department cannot concede the jurisdiction of the Board of General Appraisers in this case, nor does the Board seem to have properly considered the requirements of law on this subject. The value of the rupee was declared by the Director of the Mint as equivalent to 23-3/10 cents in United States coin. No currency certificate of any kind was therefore necessary, and the United States consul at Madras was not called upon to certify to any valuation of the rupee at the time of shipment inasmuch as there was no depreciation from the declared value (23-3/10 cents) at that time. Had the rupee depreciated so that its value in United States currency was less than 23-3/10 cents, it would have been necessary that a currency certificate of the United States consul, in the usual form (Consular Form No. 144), should have been attached. The former decisions of the Board of General Appraisers (G. A. 3487 and G. A. 3514), referred to by that Board as authority for the present decision, involve a different issue. In those cases the currency in which the invoices were made out was claimed to be a depreciated currency, and the Board of General Appraisers very properly held that in the absence of a consular certificate (Form No. 144) the value of the currency must be computed as declared by the Director of the mint.

" The present case involves no question as to the sufficiency or insufficiency of any consular certificate of depreciation. It, on the contrary, rests entirely upon the closing provision of Section 25 of the Act of August 28, 1894, which is as follows: ' That the Secretary of the Treasury may order the reliquidation of any entry at a different value, whenever satisfactory evidence shall be produced to him, showing that the value in United States currency, of the foreign money specified in the invoice, was, at the date of certification, at least 10 per cent. more or less than the value proclaimed during the quarter in which the consular

certification occurred.' As the invoice and accompanying papers submitted by you for the inspection of this Department, at time of entry, clearly showed that the true value of the rupee at the time that the invoice was made out was 23 per cent greater than the value declared by the Director of the Mint on January 1, 1896, you were duly instructed to assess duty on the basis of the higher valuation. The question at issue in this case is one, therefore, specially relegated by said Section 25 to the supervision of the Secretary of the Treasury. In view of the decision of the United States Supreme Court in the case of the United States v. Klingenberg (U. S. Rep. 153, p. 93), the Board of General Appraisers is entirely without jurisdiction, and its decision, in the opinion of this Department, is clearly null and void. The protest should have been referred to this Department, and not to the Board of General Appraisers, but as the Board deemed it advisable to assume jurisdiction in this case, you are hereby directed to file an application for review of said decision, in accordance with the provisions of Section 15 of the Act of June 10, 1890.

" Respectfully, yours,

" CHARLES S. HAMLIN,

" Assistant Secretary.

" (2264–h.)

" Collector of Customs,

" Boston, Mass."

" T. D. 18110. " *Value of Rupee of India.*

" TREASURY DEPARTMENT,

" June 16, 1897.

" SIR :

" The Department duly received your letters of the 24th and 26th ultimo and 11th instant, submitting the protests of various importers against your liquidation of entries covering merchandise imported from the East Indies after February 3 last, on a basis of a value of the rupee of India, greater than that proclaimed by the Director of the United States Mint

for the quarter of the year in which the goods were exported to the United States.

" It appears that in liquidating the entries in question you converted the rupee into United States currency at the rate of exchange certified to by the United States consul, which was considerably higher than the proclaimed rate.

" As the actual value of the rupee is shown to have been, at the time of shipment, greater by more than 10 per cent. than the proclaimed value, and as the evidence of such actual value contained in the certification of the United States consular officer on the invoices submitted with the protest is satisfactory to the Department, your action in liquidating said entries at the value stated by that officer is hereby approved under the authority of section 25 of the act of August 28, 1894.

" Respectfully yours,
" O. L. SPAULDING,
" Acting Secretary.

" (2264 h.),
" Collector of Customs,
" Boston, Mass."

T. D. 18327—Value of Rupee of India.

TREASURY DEPARTMENT,
September 4, 1897.

GENTLEMEN :—

In reply to your letter of the 30th ultimo, you are informed that so long as the actual exchange value of the rupee of India exceeds by more than 10 per cent. the value proclaimed according to the quarterly estimates of the director of the mint, such actual value (and not the proclaimed value) will be taken in accordance with the provisions of section 25 of the Act of August 28, 1894, as a basis for the computation of duties on merchandise invoiced in rupees.

Respectfully yours,
W. B. HOWELL,
Assistant Secretary.

Fulton Bag and Cotton Mills, Atlanta, Ga.

It will be observed that in these rulings the Treasury Department commits itself distinctly to the view, that Collectors are warranted in ignoring the intrinsic values of foreign coins, as ascertained and proclaimed, whenever the United States consuls shall certify that the "demand rate of exchange" of such currencies is at least ten per cent. more or less than the proclaimed value, *and that such a certificate creates a case within the proviso to Sec. 25, as one "where satisfactory evidence is brought before the Secretary,"* etc. The assertion that such consular certificates are "satisfactory evidence to the Department" is reiterated in them, and the action of Collectors in adopting the exchange valuation pursuant to them

Absolute certainty as to what the Treasury intended to accomplish by these reliquidations, however, is provided by Treasury decision 23649, ordering appeal to the court in the present case, as follows:

(23649.)

Value of Indian Rupee.

Decision of Board of United States General Appraisers as to the interpretation to be given to the proviso to section 25, act of 1894, appealed from.

TREASURY DEPARTMENT, *April* 5, 1902.

SIR: The Department is in receipt of a decision of the Board of United States General Appraisers, dated the 29th ultimo (G. A. 5110), on protest (49779*b*–1321) of Whitridge, White & Co., wherein it is held that the proviso to section 25 of the act of August 28, 1894, has reference only to the coin or silver value of the Indian rupee and that there was, therefore, no authority in law for collecting duties on the merchandise based on the exchange or actual commercial value of the rupee at the time of exportation of the merchandise under consideration.

In order that this question may receive the judicial interpretation of the courts you are hereby directed to file an appeal from the decision of the Board of United States General Appraisers in this case, in accordance with the provisions of section 15 of the act of June 10, 1890.

Respectfully,
(2264*h*.)

O. L. SPAULDING,
Assistant Secretary.

T. D. 22511—" *Rupee of India.*

" *In the liquidation of entries the value of the Indian rupee is to be estimated in the first instance at the value proclaimed by the Director of the Mint.*

" TREASURY DEPARTMENT,
September 26, 1900.

" SIR : Referring to Department's instructions of February 3, 1897 (T. D. 17766), and those of June 16, 1897 (T. D. 18110), under which a practice was inaugurated of liquidating entries covering merchandise imported from India, and invoiced in rupees, on a basis of a valuation for the rupee other than that declared by the Director of the Mint for the quarter covering the respective shipments, I have to inform you that it has been recently held by the United States Circuit Court for the District of Massachusetts that such practice was not in accordance with the requirements of section 25 of the Act of August 28, 1894. While the Department does not concede the correctness of the decision of the United States Circuit Court for the District of Massachusetts in this matter, and has requested the Attorney General to file an appeal therefrom, in accordance with the provisions of section 15 of the act of June 10, 1890, nevertheless, in order to avoid further litigation as to future importations, and in order to fully protect the interests of the revenue, you are hereby instructed to disregard said rulings of the Department (T. D. 17766 and 18110), in so far as future importations are concerned, as to which you will be governed solely by the value proclaimed for the rupee by the Director of t e Mint for the quarter covering the respective shipments. If such proclaimed value is less than that shown by the consular certificates accompanying the invoices you will report the fact immediately to this Department, so that a reliquidation should one be deemed necessary, may be ordered and the collection of the increased duties chargeable on such importations secured.

" Respectfully,
" O. L. SPALDING,
" Acting Secretary.

" Collector of Customs,
" Boston, Mass."

Under this order, very many entries were of course liquidated or reliquidated at the proclaimed value of the rupee, but no refund in any case was actually made, and steps were in every case taken to reliquidate these entries yet again, at exchange values. Boston merchants having made inquiry as to this, elicited the following answer from the Treasury Department:

"TREASURY DEPARTMENT,
"Office of the Secretary.

"WASHINGTON, April 4, 1901.

"MESSRS. HITCHINGS & COULTHURST,
"145 South Street, Boston.

"GENTLEMEN—In reply to your letter of the 30th ultimo, further in regard to the liquidation of entry of 17,778, covering merchandise imported from India, and invoiced in rupees, I have to state that in cases of this character the appreciation of the money of the invoice is considered, and not, as you suppose, the appreciation of metal in the coin.

"Respectfully,
"(Signed), O. L. SPAULDING,
"Assistant Secretary,
"A. J."

"No enclosure."

This was followed on May 18, 1901, by another ruling, as follows:

T. D. 23050. "*Entries of merchandise invoiced in rupees.*

"(Circular No. 61).

"TREASURY DEPARTMENT,

"MAY 18, 1901.

"TO COLLECTORS AND OTHER OFFICERS OF THE CUSTOMS.

"Referring to the Department's decision of September 26, 1900 (T. D. 22511), collectors and other officers of the customs are instructed as to all entries of merchandise invoiced in rupees made within one year prior to the receipt of these in-

structions and liquidated on the basis of a value for such rupee other than that estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury, to liquidate said entries on the basis of the proclaimed value of the rupee for the respective quarters covering shipments as though no liquidation had theretofore been made. Immediately thereafter all the papers will be forwarded to the Department for such action as it may deem proper in accordance with the instructions of September 26, 1900, above mentioned. No refunds are to be made pending the receipt of further instructions from the Department, and the liquidation of past entries against which no protests have been filed or against which protests have been filed, but subsequently waived or withdrawn, will not be reopened.

"O. L. SPAULDING,
"Acting Secretary."

Pursuant to this (Record, p. 5), the respondents' entry of gunnies, being made June 18, 1900, and thus within one year prior, was liquidated (*i. e.* reliquidated) on the basis of the proclaimed value for the quarter covering the shipment (April-June, 1900), but refund was withheld from the importers, and the papers (entry, invoice, consul's certificate, etc.), forwarded to the Department for action in accordance with the instructions of September 26, 1900, which had been to the effect that "if such proclaimed value is less than that *shown by the consular certificates accompanying the invoices* you will report the fact immediately to this Department, so that a reliquidation should one be necessary, may be ordered and the collection of the increased duties chargeable on such importations secured."

The papers in this case were thus forwarded on May 29, 1901, and on June 6th (Record, p. 7), the Treasury Department returned them, informing the Collector that "satisfactory evidence" had "been produced to the Secretary of the Treasury," showing that the value of the rupee was, on the date of shipment of these gunnies, 32 cents, which being more than ten per cent. in excess of the proclaimed value for the quarter year in question, the Collector was directed to reliquidate again this entry, translating the rupee at the higher value, precisely as he had originally done. Be it remembered that the consular certificate, appended to the invoice and entry papers, had been produced to the Secretary by his own

orders, and that it contained the assertion of an "exchange value" of 32 cents for the rupee,—exactly the value which he then proceeded to adopt, and the only scintilla of proof of any such value which the record anywhere contains.

Against this new reliquidation, which restored the original liquidation, the respondents duly protested as they had against that (Record, pp. 5 & 6), and this new protest being sent to the General Appraisers, *apparently by the special permission* of the Secretary, it was sustained by them (Record, p. 15), upon evidence (Record, pp. 8 to 10) and facts agreed between counsel (pp. 11 to 13), and argument, upon the grounds that the proviso to Sec. 25 did not permit the Secretary of the Treasury to depart from "the value of the pure metal" of the rupee in favor of the exchange or any other substituted value, as in this instance had been done (Record, p. 13), and that any liquidation of duties by a Collector, based upon orders from the Secretary in contravention of law, was illegal and a basis for protest, coming within the jurisdiction of the Board *(idem)*.

From this decision the Goverment or the Collector, duly appealed into the United States Circuit Court for the District of Maryland (Record, p. 3 *et seq.*), wherein a decree was made *pro forma* on September 26, 1903, affirmiug in all things the decision of the General Appraisers (Record, p. 16), and from that decree, appeal was again duly taken into the Circuit Court of Appeals for the fourth circuit (Record, p. 1), where full argument was had, and on March 14, 1904, a decision was handed down, affirming those previously rendered in the case, upon grounds set forth in a learned opinion by Judge Boyd (Record, pp. 19 to 25).

From that decision this appeal by writ of *certiorari* has been taken by the Government.

On this résumé of the case, it must be clearly apparent that the precise point of controversy is whether the Government is limited, by the statutes, to the translation of foreign currencies according to the value of their pure metal, or is free to depart from that basis of valuation whenever the adoption of a different one would yield a better revenue. As the quoted publications show, the Treasury has since 1897, throughout this rupee controversy, adhered to the latter view, and despite the remarkable effort of Government counsel to

suppress evidence of facts freely stipulated in Beebe's case, whose every circumstance was identical with those herein (See stipulation in Beebe's case, printed as Appendix A. hereto) it is still amply manifest that the present case presents a typical instance of rejection of the metal value and resort to the exchange value, of the Indian rupee.

Hence we have to consider the historical position of Congress as to currency valuations, and its present position as viewed in the light of such history.

Dutiable Value of Foreign Currencies.

From our earliest days, the fixing of equivalents in our own currency for the various foreign value units, has always been a matter of careful statutory regulation. In the Act of July 31, 1789 (1 Stat. 29), Sec. 18, enacted rigid equivalents for the chief foreign coinages found in invoices of imported merchandise, and added :

> " and all other denominations of money in value as near as may be to the said rates ; and the invoices of all importations shal be made out in the currency of the place or country from whence the importations shall be made, and not otherwise.

It is noteworthy that under this earliest enactment on the subject, no fluctuation either in the value of the coin metal, or in the conventional or " exchange value " of the foreign coin, could have been considered by the Treasury Department on the assessment of duties. The evident plan of Congress was to fix an invariable measure, so that whatever, more or less than the enacted sum, a merchant might have to pay for his foreign currency, he at all events would know that duty would be assessed on the basis of the enacted sum, and neither more nor less.

This enactment was found in the very same law, and side by side with the provision in its § 18, whereby appraisement at actual foreign values was first required. And from then till now the fixing of market value has gone hand in hand with this " fixed rule of computation," showing that Congress has never regarded translation of foreign currency as any part of the determination of " market values."

The same system was repeatedly re-enacted, in 1790 (1 Stat. 167), 1799 (1 Stat. 627), and continued with mere additions or cor-

rections to the list of declared values, in 1801 (2 Stat. 121), 1834 (4 Stat. 699), 1842 (5 Stat. 496), 1843 (5 Stat. 625), 1846 (9 Stat. 14), etc.

In 1873, the act of March 3 (Rev. Stats. Sec. 3564) embodied a new general method on this subject, as follows :

> "That the value of foreign coin as expressed in the money of account of the United States, shall be that of the pure metal of such coin of standard value ; and the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the Director of the Mint, and be proclaimed on the first day of January by the Secretary of the Treasury."

But it must be noted that while the method was changed, the rule of pure-metal valuations was strictly adhered to.

In the tariff act of Oct. 1, 1890 (26 Stat. 624), this method was so far amended as to require quarterly instead of annual estimates and proclamations, and the next enactment on the subject was that of 1894, set forth in full in the "statement" in this brief.

Here is over a century of statutory regulation of the matter of translating foreign currencies, on a basis consistently arbitrary throughout. In the earlier laws, Congress itself declared the equivalents to be adopted, and no Collector nor Secretary could then be concerned with any fact or condition, however reasonable or convincing, in favor of resorting to any different equivalent. In the later laws the fixing of the several equivalents was confided to executive officials, but these were most distinctly instructed as to the rule and measure they should adopt, that it must be the pure metal value, and the precise time and manner in which it must be done. No discretion was delegated as to the standard to be chosen, nor the form or time of promulgation, any more than it had been earlier delegated to the Collectors, but the purely executive function of ascertainment (of the amount and nature of the pure metal) and calculation (of the United States value of such pure metal). Unquestionably, under the Act of 1873 or the Act of 1890, any estimate and proclamation by the officials, of another value than the pure metal value, would have been *ultra vires* and wholly null and void, and no such official could have been permitted to plead that because the ascertainment of pure metal values had been finally entrusted to him, his action in ascertaining and announcing exchange values instead was beyond the scrutiny of the

courts. Still more arbitrary and intolerable would have been an attempt by executive officials to subvert, long afterward, their own proclamation as having embodied a misconception of facts or law. And this is as manifestly true of the Act of 1894, unless by the proviso, Congress went about to expunge, and sweep overboard, the very system which it was at the same moment carefully re-enacting.

These currency statutes were repeatedly tested in the courts, for there were of course, in the many aspects of trade, and of the fluctuations of exchange, numerous instances where either the Government or the taxpayer deemed the resort to intrinsic values unjust. Several such cases have been decided in this court, the leading ones, relevant now, being

Arthur v. Richards, 23 Wallace, 246,
Cramer v. Arthur, 12 Otto, 612,
Hadden v. Merritt, 115 U. S., 25,
U. S. v. Klingenberg, 153 U. S., 93.

Arthur v. Richards was a case wherein this court held that the Act of 1873 applied, and proceeded to examine and discuss its provisions, saying of the "pure metal" clause:

> "The plain meaning of this language is, that the value of foreign coins, in United States money, shall be measured by the amount of pure metal contained therein when of standard value; that is when of the weight and fineness required by the laws and regulations of the country where they are produced. This value having been duly ascertained and published by the Superintendent of the Mint and the Secretary of the Treasury, becomes the rule in the cases and for the purposes to which, according to the fair meaning of the Act, it is to be applied. * * * The Government contends that it is to be applied in all cases where the estimation of the value of foreign moneys of account is required by law; and that its principal and, perhaps, most important purpose, is the very one in question, namely: the estimation of the invoice values of imported goods chargeable with *ad valorem* duties.

This the court found to be the correct view, pointing out several reasons, and adding :

> There were also other reasons, if any were needed, having respect to the fictitious par of exchange so long persisted in by the bankers of both countries, which made it expedient for Congress itself to fix the value of the pound sterling.

So that the very same feature of a fictitious exchange value, which the Government now contends warrants it in turning away from the pure metal value, was perceived and discussed many years ago in the Richards case, and as a strong reason for fixing and adhering to a value not liable to be affected by the capricious fluctuations of exchange.

As a reason for construing together, and in harmony, two sections of this currency law, the court further said :

> Otherwise, there would exist two differing methods of computing the values of foreign coins, and two differing rules for estimating the values of goods imported from different countries * * *

In Cramer v. Arthur, the invoice was in Austrian florins, which had been translated, in reckoning the duty, according to the ascertainment and promulgation made under the statute of 1873. The importer adduced evidence tending to show that in fact, his florins had cost less than their proclaimed value, and that the proclamation had ceased to represent the value of the florin correctly, by reason (perhaps) of the demonetization of silver in Austria. But the Supreme Court declined to allow any divergence from the proclaimed value, and said :

> " In that case (Collector v. Richards), we held that the act of 1846 was repealed by the Act of 1873, which expressly repealed all acts and parts of acts inconsistent therewith ; and that, instead of fixed and permanent valuation of foreign coins, which must often involve a departure from the true values, Congress had adopted the juster plan of having them subjected to annual revision by the director of the mint, and announced to the public by proclamation of the Secretary of the Treasury. And as the franc had thus been proclaimed to be worth 19 cents and 3 mills, we decided that the collector rightly adopted that valuation. * * *

"That the florin is the standard money of account of Austria is as evident as that the pound sterling is the standard money of account of Great Britain. The plaintiff's own invoice is a proof of this. Whether represented by a corresponding coin of equal amount is of no consequence. * * * Coin is the basis of the currency of both countries. * * * The silver florin was also formerly a standard coin in Austria, and the florin as a money of account originally derived its value therefrom. It was from this coin that the valuation of the florin was made by the director of the mint, as set forth in the proclamation of the Secretary. That valuation, so long as it remains unchanged, was binding on the Collectors and on importers; just as binding as if it had been in a permanent statute, like the Statute of 1846, for example. Parties cannot be permitted to go behind the proclamation, any more than they would have been permitted to go behind the statute, for the purpose of proving, by parol or by financial quotations in gazettes, that its valuations are inaccurate. The government gets at the truth, as near as it can, and proclaims it. Importers and collectors must abide by the rule as proclaimed. It would be a constant source of confusion and uncertainty if every importer could, on every invoice, raise the question of the value of foreign moneys and coins."

The opinion then proceeds to discuss the law and regulations, and the rights of importers with regard to invoices made out in *depreciated* foreign currencies, under the special statute (Sec. 2903, Rev. Stat.) above quoted with regard to depreciated currencies. The opinion then proceeds as follows :

"In the estimation of the value of foreign moneys for the purpose of assessing duties, there must be an end to controversy somewhere. When Congress fixes the value by a general statute, parties must abide by that. When it fixes the value through the agency of official instrumentalities, devised for the purpose of making a nearer approximation to the actual state of things, they must abide by the values so ascertained. If the currency is a standard one, based on coin, the Secretary's promulgation fixes it ; if it is a depreciated currency, the parties may have the benefit of a consular certificate. To go behind these and allow the

examination by affidavits in every case would put the assessment of duties at sea. It would create utter confusion and uncertainty. If existing regulations are found to be insufficient, if they lead to inaccurate results, the only remedy is to apply to the President, through the Treasury Department, to change the regulations. * * * It is of the utmost consequence to the government, and it is on the whole, most beneficial to importers, that the value of foreign moneys should be officially ascertained, and that they should be fixed by a uniform method or rule."

Hadden v. Merritt involved a similar instance of goods invoiced in a foreign currency (Mexican dollars), which the Collector translated " in accordance with the value of such coin as estimated by the director of the mint and proclaimed by the Secretary of the Treasury " for the period covering the importation, but which the importer offered to prove had been erroneously estimated. In this instance, in the place of an attempt to show a different than the proclaimed value for the currency of the invoice by departing from the metallic substance of such currency and adopting a different *foreign* basis of measurement, the attempt was to limit comparison as required by statute between such metallic medium and United States money of account, and to insist that as the Government's comparison had been with our silver money, it was therefore illegal This contention the court rejected, and reviewing the statutes hereinbefore cited, proceeded as follows:

" The value of foreign coins, as ascertained by the estimate of the director of the mint and proclaimed by the Secretary of the Treasury, is conclusive upon custom-house officers and importers. No errors alleged to exist in the estimate, resulting from any cause, can be shown in a judicial proceeding to affect the rights of the government or individuals. There is no value, and can be none, in such coins, except as thus ascertained; and the duty of ascertaining and proclaiming their value, cast upon the Treasury Department, is the performance of an executive function requiring skill and the exercise of judgment and discretion, which precludes judicial inquiry into the correctness of the decision. * * * To permit judicial inquiry in any case is to open a matter for repeated decision, which the statute evidently intended should be annually settled by public authority."

In the case of the United States v. Klingenberg, 153 U. S., 93, the merchandise had been invoiced in Austrian florins, and these were translated by the Collector at the value duly ascertained and promulgated under the foreign currency statute of 1890, for the gold florin. The importer contended that his goods had been purchased in silver, paper or some other depreciated florin, but the ascertainment and promulgation then current had set forth gold as the actual metallic standard of Austria. No consular certificate as for a depreciated currency accompanied the invoice, nor was any produced by the importer. This court again refused to permit any departure from the proclaimed standard of valuation, saying: "The collector was not authorized to presume that the paper florin was so depreciated as to be reduced to the value of the silver florin, which under the proclamation of the Secretary of the Treasury was only referred to as the nominal standard."

And further, concerning the conclusiveness of the valuations proclaimed pursuant to law:

> "This being the proper construction to be placed upon the proclamation of July 1, 1892, we are of the opinion that the Collector's action in adopting the value of the gold florin at the estimate fixed therein was not subject to review by the Board of General Appraisers, under the principle laid down in the authorities already referred to. If the action of the Collector was conclusive, certainly the Circuit Court of the United States had jurisdiction to pronounce the decision of the Board reversing the Collector's ruling, null and void."

The court then discusses the relative jurisdiction of the General Appraisers and the Federal Courts in matters relegated to them by sections 14 and 15 of the Customs Administrative Law of 1890, and concludes upon that point thus:

> "In other words, the right of review by the Circuit Court is coextensive with the right of appeal to the Board as to all matters except the dutiable value of the imported merchandise, as to which the decision of the Board of General Appraisers is by section 13 made conclusive,"

which conclusion the court proceeds to reinforce by the citation of numerous cases wherein it is determined, conclusively as the court asserts, that upon all questions of either law or fact, affecting the rate or amount of duty assessed upon imported merchandise, and

with the sole exception of the one question of appraisement, jurisdiction lay in both the General Appraisers and the Federal Courts to review the decision of the Collector.

These four cases would seem to have settled beyond cavil, that under all the laws up to 1894, no reason could be strong enough to warrant either the Government or the importer in departing a hairsbreadth from the pure metal valuations which Congress then directed, *and still directs*, shall be estimated, proclaimed, *and followed in the exaction of duties*. Accordingly we find these cases dwelt on by the Government counsel, only as asserting the finality of what the officials do; but so to cite them is a palpable case of putting good law to bad uses, for it is manifest sophistry that because the official act *in obedience* to the mandate of the statute is final, therefore any and every official act is final. There is no fear that this court will find in the cited cases any doctrine of finality, until it first scrutinizes the official act under challenge, observes precisely what it was, and compares it with the statute, noting whether or not it is in conformity therewith.

The Meaning and Effect of the Proviso to Section 25, Act of 1894.

Since manifestly the Treasury did, in this and all the other rupee cases, order and effect an assessment based on exchange value, the case must turn on the legality of its action to said effect; and as any such action would have been a palpable violation of all the earlier laws, and equally so of the main portion of Sec. 25 itself, the attempt to support its legality must rest on the contention that the proviso appended to that section authorized precisely what the section itself prohibited. Indeed, this is substantially the ground taken by Government counsel, the force of whose brief, and its entire third and last point, is focussed on the meaning of the proviso, and whose contention that the Secretary did learn, or may have learned, that the silver in the rupee was worth 32 cents, seems hardly to invite serious consideration. There are many conclusive means of showing that the proviso had no such intent and no such effect, and we will now discuss them.

1

The place of the new provision of the law, as a proviso to Sec. 25, Act of 1894, proves that it had not the intent for which the appellants contend.

Sec. 25 was a re-enactment by Congress, of the pure metal basis of valuation for foreign coin currencies.

In view of the decisions of this court upon the system in question, as cited above, it seems beyond dispute that Congress by its act of 1894 deliberately concluded to retain the system with all that it implied in the way of a fixed and certain rule, enabling every merchant to know with what valuations he must reckon, and operating, in the long run, justly to all concerned.

And here we must point out an inaccuracy in the Government brief, in asserting that the only new feature of Sec. 25 is its proviso. Its enactment as to date of exportation is equally new, and this is important as showing the intent of Congress by this section to perfect the details of the old rule and system which it was renewing.

Such being the very clear meaning of Sec. 25, the proviso which Congress appended to it is open to two constructions, one of which, for which we contend, makes it harmonize with the body of the section, and with the whole course of the statutes as to foreign currencies, merely enabling the Secretary to carry the established system to greater perfection by very frequent and informal ascertainments of the fluctuations in bullion values, while the other, for which the Government contends, makes this proviso a doorway, through which the Secretary can depart from the whole system of pure metal values at his will, and close the door in the face of all inquiry as to what he has done and why.

It cannot be denied that on the latter construction, the proviso would be most revolutionary in its effect on the valuation of foreign currencies. There is no reasonable relation between a statute that pure metal values shall be followed, and, a proviso that unless they agree with arbitrary exchange values they need not, provided the Secretary sees fit to desert them For this is in effect to repudiate them wholly, in favor of exchange values, save where those may happen substantially to coincide.. It seems manifest that no such

radical change in the system would have been put by Congress into a proviso, and appended to such an enactment as the body of Section 25 of the Act of 1894.

The function of provisos is well settled under the decisions, and is not to revolutionize the law to which they are appended.

> "The voice of the proviso generally is either to except something from the enacting clause or to qualify or restrain its generality, or to exclude some possible ground of misinterpretation of it as extending to cases not intended by the legislature to be within its purview."

American-English Encyclopædia of Law, Second Edition Statutes page 678 and cases cited in Note 19.

> "Its office is not to confer a power or as a general rule to enlarge the enactment to which it is appended, so as to operate as a substantive enactment itself." (See cases cited in Note 1, page 679). "A proviso or exception as a general rule relates only to the paragraph or distinct portion of the enactment which immediately procedes it, and is to be confined by construction to the subject matter of the section of which it is a part."

Cases cited in Note 7, page 680.

> "Where the enacting clause is general in its language and object and a proviso is afterwards introduced, the proviso is construed strictly and takes no case out of the enacting clause which does not fall fairly within its terms."

Cases cited in Note 5, citing United States v. Dickson, 15 Peters, 141; Ryan v. Carter, 93 U. S., 83; United States v. Newhall, 91 F. R., 525; Wall v. Cox (C. C. A.), 101 F. R., 410; *in re* Mathews, 109 F. R., 614.

> "The rule that all parts of a statute are to be construed together and effect given to the whole, if possible, is to be preserved in the construction of provisos and saving clauses. Thus, a construction of a proviso which is plainly repugnant to the body of the act is to be avoided if possible."

Quoting Dollar Savings' Bank v. United States, 19 Wallace, 227, where it was held that a broad construction of the proviso being repugnant to the body of the act was inadmissible.

In Minis vs. U. S., 15 Pet., 423,
Mr. Justice STORY said (at p. 445):

> "It would be somewhat unusual to find engrafted upon "an act making special and temporary appropriation, any "provision which was to have a general or permanent appli- "cation to all future appropriations. * * * The office of "a proviso, generally, is either to except something from "the enacting clause or to restrain or qualify its generality, "or to exclude some possible ground of misinterpretation of "it," etc.

In United States vs. Dixon, 15 Pet., 141,
the same eminent authority said:

> "Where the enacting clause is general in its language and "objects, and a proviso is afterwards introduced, that pro- "viso is construed strictly, and takes no case out of the en- "acting clause which does not fall fairly within its terms."

It is submitted that the following language used by Judge COLT in the Newhall case, 91 Fed. Rep. 525, exactly expounds the sound doctrine of this matter.

"This section, until we reach the proviso, is substantially a re-enactment of the previous law. The contention of the government rests upon the proposition that the word "value" in the proviso is not limited to the value "of the pure metal," but extends to other methods of valuation never before adopted with respect to specified foreign standard coins. To adopt this construction is to hold that Congress intended to depart from the long-established rule, and to introduce a new and uncertain mode of valuation of cases coming within the terms of the proviso. The result is that the body of the section provides one way, and one way only, for estimating the value of foreign standard coins, while the proviso covers other ways in conflict with former well-settled principles. Certainly the court should not adopt such a construction, if it be at all doubtful. To hold that, where the value of the foreign coin during the quarter varies less than 10 per centum from the value proclaimed, the pure metal value is to govern, and that when it exceeds 10 per centum the Secretary of the Treasury may adopt any standard of valuation he sees fit, based upon rate of exchange, trade conditions, or financial reports, would result in the introduction of those elements of uncertainty and confusion which the law has aimed especially to

prevent. The purpose of the proviso, in our opinion, was not to change the principle in estimating the value of foreign coins, but rather to permit of a different estimate on the same principle, if it should appear at any time during the quarter that the proclaimed value was to a considerable degree at variance with the actual fact existing at the time of any given importation. While the standard of valuation should be fixed and based on intrinsic value, the whole legislation on the subject shows an effort on the part of Congress to provide speedier means for correcting the valuation when it is shown to be wrong. Until 1873 any change in the valuation of specified foreign standard coin required a special enactment. By the statute of 1873 the proclaimed estimate must be made annually. By the statute of 1890 it must be promulgated quarterly. The proviso, in section 25 of the act of 1894, was simply another step in the same direction, and was intended to permit a new estimate of valuation at any time during the quarter where there was found to be an error of at least 10 per centum. This is the natural construction and evident intent of the whole section, and is in harmony with previous legislation. The proviso must be considered in connection with the body of the section and the subject-matter to which it relates. Under a familiar principle of statutory construction, a proviso is to be strictly construed, and it "takes no case out of the enacting clause which does not fall fairly within its terms." U. S. v. Dickson, 15 Pet. 141, 165. This proviso has reference to the subject-matter treated in the body of the section, and any broad construction of the word "value," which should enlarge its scope as therein defined, would be doing violence to every sound rule of statutory construction, and is contrary to the general context of the proviso itself, taken as a whole and in connection with what precedes. It would introduce confusion and inconsistency into a statute which is otherwise plain and intelligible."

A remarkable analogy exists between the circumstances involved in the present case, as well as the Treasury contention herein, and the same features as involved in the case of

De Forrest vs Redfield, 4 Blatch. 478,

and while that case has only the authority of the circuit court, its conclusion was adopted and has ever since been incorporated in Treasury practice and regulations.

The case concerned a proviso to the Act of March 2, 1799 (1 Stats 673), whereby Congress appended to one of the earliest of the currency statutes above discussed, a power for the President to

make " proper regulations for estimating the duties " on goods invoiced " in depreciated currencies, issued and circulated under authority of any foreign government." Under the plea of this power, the President (through the Secretary) proceeded to fix an arbitrary value for certain foreign coin, not identical with its actual metal value, but upon a theory that he might choose his own basis for such valuation. But the court condemned this, saying that power to make fit and proper regulations did not enable the President to fix an arbitrary value on foreign coins. " If so, he might at his pleasure increase or diminish the rate of duties accordingly as he might happen to favor a high or low tariff or as he might think the exigencies of the occasion required, without regard to the legislative branch of the Government. If he could thereby change the intrinsic value of foreign coin $6^1/_4$ or 4 per cent he might 15 per cent. It would in effect enable him to make or remake the revenue laws, not only without consulting, but in defiance of, the House of Representatives." And the court added that the power in the proviso to make regulations implied regulations to carry out the laws relative to foreign coins, not to violate them. The matter of that early proviso afterward became Sec. 2903 Rev. Stats., which is law today, and pursuant thereto and to the doctrine of the De Forrest case, the Treasury has made Article 409 of its Regulations of 1899, as follows:

> " In the assessment of duty, the currency of the invoice must be reduced to the money of account of the United States upon the basis of the values of foreign coins as proclaimed by the Secretary of the Treasury on the first days of January, April, July, and October of each year. The date of the consular certificate will indicate the value of the invoice currency.
>
> " When the standard value of a foreign coin has not been thus proclaimed, any invoice expressed in such coin must be accompanied by a consular certificate showing its value in standard gold dollars of the United States.
>
> " When invoices are made out in a paper currency which has become depreciated the consul is instructed to certify the relative value of said currency as compared with the standard coin of the country of exportation *the latter being the only currency recognized by the law*, and entries of such invoices must be reduced at the values so certified."

2.

There was, elsewhere in the Statutes, a provision on precisely this matter of divergence between bullion and exchange values of currencies. It covered only depreciations, and the manifest way to accomplish what the petitioner thinks was intended, would have been to amend it.

Sec. 2903 of the Revised Statutes provides that

> "The President may cause to be established fit and proper regulations for estimating the duties on merchandise imported into the United States, in respect to which the original cost shall be exhibited in a depreciated currency issued and circulated under authority of any foreign government."

It is manifest that the insertion of two words into this provision, causing it to read "shall be exhibited in a depreciated or appreciated currency," would have accomplished, unequivocally, the object for which the petitioner thinks resort was had to the proviso in Section 25.

We believe the continued presence of this provision in the Statutes, and the fact that it was neither repealed nor amended in 1894, conclusively negatives the petitioner's contention. For if the new proviso was intended to provide a method for taking up divergences between bullion values and exchange values, then since it covered both upward and downward divergences, there would be one method for upward and two wholly distinct and independent methods for downward ones,—a thing unprecedented and wholly improbable;—creating exactly the "two differing methods of computing the values of foreign coin" which this Court condemned in Arthur v. Richards *(supra)*.

Again, Sec. 2903 provides for taking up *any* divergence between bullion and exchange, however slight. It does not remain inoperative, nor should it, until the depreciation reaches 10 per cent. Differences between bullion and exchange are likely to be of long

duration, and should hence be permanently provided for if at all, and the least as well as the greatest. But there is no difference in principle between depreciation and appreciation, such as should result in recognizing the latter only when it reaches 10 per cent. Yet the appellants' contention involves the assertion that Congress, which had in Sec. 2903 enacted that every depreciation might be recognized, proceeded by the proviso to Sec. 25 to enact that appreciations of 10 per cent. or more, only, might be recognized.

Interesting confirmation of this view is found in the fact that the Treasury, for a long time after 1894, deemed Section 2903 the only statute warranting departure from bullion values. Its first ruling in Newhall's case (T. D., 17107) proves this, as follows:

(17107) Value of rupee as applied to importation of tanned skins.

TREASURY DEPARTMENT, May 12/96

SIR: The Department is in receipt of your letter of the 7th instant, in which you forward an invoice of certain tanned skins consigned to J. Allston Newhall & Co. of your port, from Madras, India.

It appears that the invoice is made out in rupees; that the value of the rupee at the time of shipment and consular certification, as estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury, was $0.233, but that its actual value in exchange between Madras and New York, through London, was at that date $0.285, or 23 per cent greater than said proclaimed value.

You refer to Synopses 15606 and 16037, relative to the value of the Mexican dollar current in Puerto Rico, and you request instructions as to the treatment of the importation covered by the invoice submitted, and similar importations likely to arrive in the future.

In reply, I have to state that inasmuch as the actual value of the rupee at the time of the exportation, though higher than the proclaimed value, was still considerably less than its nominal value ($0.444), the Department is of the opinion that said currency must be regarded as a depreciated currency, and you are therefore authorized to

liquidate entries of merchandise covered by invoices made out in such currency at the value certified by the counsel.

Respectfully, yours,

CHARLES S. HAMLIN,

Assistant Secretary.

Collector of Customs, Boston, Mass.

Treasury Decision 17766, dated February 3, 1897, and set out at pp. of this brief, is the first official assertion of the view that the proviso to Sec. 25 applies to currencies whose exchange is greater than their bullion value. In view of these historic facts, it is clearly fallacious to assert that the proviso was urgently desired, or needed, by the Treasury Department, in 1894, to cure a situation of grave and unfortunate daily results, under which the department was chafing. Nor is there a scintilla of evidence that the Secretary asked Congress for any enactment or relief in the premises.

3.

Analysis of the very terms of the proviso shows that the construction for which we contend, is the correct one.

These terms are grammatically and logically interlocked with those in the main body of the Section. A reading demonstrates that the two provisions concern the same matter and are conjoint in their adjustment of it. The words of the proviso : "the value of the foreign money specified in the invoice,"—"at least ten percentum more or less than the value proclaimed,"—"the Secretary may order reliquidation at a different value,"—all these relate and refer unmistakably to the words of the Section itself. The proviso becomes operative when the Secretary finds the value of a currency ten percentum more or less than the value proclaimed. Nothing could, we think, be clearer than that this means *the value proclaimed for the same thing.* Any other reading would be absurd grammatically and absurd in result,

for if it is enough that the Secretary finds exchange values differing from metal values, it is but a short step to the conception that he may order reliquidation because there is a difference between the invoice currency and some other currency not in the invoice. Unless the value must be found to vary from the proclaimed value of *the same coin or currency*, the words of the proviso nowhere tell *from what* it must be found to vary. And since it must needs be the value of the same thing, the proclaimed value being a pure metal one, the varying value must also be a pure metal one.

The petitioner attempts an analysis of these terms, which is marked by broad fallacy, such as that "value," when appearing the first time, means *relative worth*, the second time, *market value*, and a later one, *the invoice or market price*, whereas, as already pointed out at page of this brief, market price or value is fully determined and settled before any value is applied to the invoice currency at all. In fact, the word "value," wherever used in Sec. 25, means *the equivalent in our currency.*

No significance can be attached to the use of the term "foreign money" in the proviso, while "foreign coin" is used in the body of the section. While these terms are not identical, their use is in this instance clearly synonymous, for it is "foreign money" which must be found to have varied from "the value proclaimed," and the value proclaimed is to be of the "foreign coin."

On the other hand, the method to which the proviso authorizes the Secretary to resort, is, we submit, conclusive that fluctuations in pure metal value were contemplated in it. As already stated, exchange and bullion values may be permanently divergent, and in the case of the rupee, were divergent when the Act of 1894 was passed and on every quarter day for many years thereafter (Appellants' brief, pp.). To provide in such a matter, for liquidation at the bullion value, to be followed by reliquidation on orders from the Secretary whenever he learns of the divergence, would be absurd. The best possible knowledge of fluctuating *exchange* values, is of course to be had by our consuls in the ports of shipment and at the time of shipment. Hence they can certify it on the invoice and it can be followed in the first as easily as in any later liquidation ; nor is it in the least strengthened by reference to the Secretary. Had any such divergence been in view, it would unquestionably have been taken up by regulations like those under Sec. 2903. Fluctuations in bullion value, on the other hand, are

apt to be sudden and violent, as the history in Appellants' brief shows, and they are marked off or taken up, every three months, by a new promulgation of such values. For such a fugitive and occasional matter, the Secretary might reasonably be required to act specially in each instance, and being necessarily expert on bullion values and fluctuations, by reason of his frequent promulgations under the Statute, he, and not the Collectors, would naturally be designated to act. So that the entire procedure for which the proviso arranges, sounds unmistakably of bullion fluctuations, and thus harmonizes with the "fixed rule of computation" to which it is appended, and with the leaving of the entirely different system of Sec. 2903 wholly undisturbed.

All this is strongly reinforced by the clause which makes the proviso operative only when the divergence reaches 10 per cent. It would manifestly not be worth while to reliquidate for every fluctuation of bullion, these being adjusted by proclamation every three months, but fluctuations of exchange never being so adjusted, it cannot reasonably be supposed that a plan for taking them up by reliquidation would have been made dependent on their reaching or exceeding 10 per cent. Far less can we suppose that Congress would so multiply the provisions against exchange variation, that under one section of the law, a shrinkage in exchange however small could be recognized, while under the other, an advance in exchange could be recognized only when exceeding 10 per cent, and that two wholly inconsistent methods should be resorted to for such purpose.

4.

Conditions prevailing at and shortly prior to the enactment in question, compel the conclusion that bullion fluctuations, and not those of exchange, were in the minds of the law-makers.

Upon this matter of the conditions which were to be met, as throwing light on the true construction of the proviso, Government counsel direct much of their argument. Nothing will better

In decision 22747, the Secretary actually resorts to this absurdity, finding section 25 his authority for ordering reliquidation of an entry in milreis of the Azores, *because their value varied* more than 10 per cent. from the proclaimed value of the milreis of Portugal, the latter value being $1.08, while that of the Azorean milreis was $.6489.

suit the respondents than to have the question decided on this principle, for a true and full survey of these conditions shows beyond doubt that bullion fluctuations were, in 1894, the most important and most urgent matter calling for amendment of the law.

Thus, in five months of 1890, next preceding October, silver bullion rose 20 per cent. in value—a fluctuation, as Government counsel aver, unprecedented in range and violence. On October 1, Congress passed a new law, wherein no suggestion was found of a repudiation of the pure metal basis, but the ascertainment of bullion values was directed to be made quarterly, instead of annually as theretofore. There can be no possible doubt that this was the method wherein Congress met this new condition, and doubtless it was at the time expected to be sufficient.

All this is indeed conceded by the petitioner's counsel, but on the suggestion that Congress' only motive was to secure to the Treasury fuller advantage of the advancing silver values. The inference is that had silver *fallen* as rapidly, no amendment would have occurred. But we cannot believe this court will approve the view that enlargement of the revenue, and not justice as between the Government and the taxpayer, was the actuating motive, and we think that had the change been up or down, the same remedy would have been adopted.

But in 1893, and not only owing to the cessation of rupee coinage in distant India, but also because of the repeal of the silver-purchase provisions of the "Sherman Act" on November 1, 1893, here in our own country, silver fluctuated (this time downward) far more violently than in 1890. We are told that in one period of ten days it declined 18 per cent.

Were the quarterly ascertainments found adequate to note these fluctuations? No! For as shown by the Mint director's tables the rupee was declared to have on January 1, 1893, a bullion value of 29.2 cents, on April 1, of 29, on July 1, of 28.7, and on October 1, of 25.2. So that the wide fluctuation of June, 1893, *escaped substantially un-noticed in these circulars.* The variation continued right up to the passage of the Act of 1894, although with somewhat less violence. What, then, would Congress logically do to meet this condition? Discard the rule of pure metal values entirely, as involving a basis too capricious to be followed? The enactment of Sec. 25 demonstrates that they did not choose to discard it. Provide still more frequent ascertainments and promulgations? The record showed them that even one

per month would not suffice. Manifestly, then, a direction for informal proceedings, by the well-informed Secretary, who kept the bullion value tables constantly, to the end that whenever he discerned fluctuations wide enough to render the latest promulgation unserviceable, he might so advise Collectors and order reliquidation accordingly, they having meanwhile proceeded as required by law, in accordance with the quarterly ascertainment—here was the logical and ready remedy.

And the utmost ingenuity of counsel cannot contend but that the proviso, on its most natural construction, precisely embodies this remedy.

There is patent error in the argument of counsel that the fluctuation of silver was a negligible—while the divergence of exchange in the single instance of India was a vital matter. The one concerned the whole silver-coining portion of the world, and our trade relations with it; the other, the single case of India. The divergence between Indian rupee exchange and bullion values was no greater—4.4 cents—when the Act of 1894 was passed, than were the fluctuations of silver itself in periods as short as ten days. Yet on the Government theory, the proviso to Sec. 25, being devoted to the sole matter of Indian exchange, no means whatever was provided for taking up wide fluctuations of bullion value occurring between proclamations. Yet these occurring, would at that time have affected imports from China, Japan, India, Mexico, Columbia, Peru, Bolivia, Ecuador and the Central American States. Among these silver standard countries, India was relatively unimportant in her exports to this country, sending in all, $14,829,661 worth in 1894, while from China and Japan alone, the total was *circa* $40,000,000.*

Counsel suggests that Congress had no reason to expect any further violent fluctuations in silver value. Are we wrong in thinking that a certain great political party was already committed, in 1894, to the silver coinage policy on which, only two years later, it came extremely near electing its presidential candidate? Or that if he had been elected, silver would have appreciated with a suddenness casting the movement of 1893 wholly into the shade?

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* Imports and Exports of Merchandise into and from the United States, during the years ending June 30, 1890-1899.
Treasury Department, Bureau of Statistics, Nos. 7 and 8.

It is interesting to note, in the "Report of the Chief of the Bureau of Insular Affairs" for 1903 (at pp. 10-12) that in seven months in 1903, the price paid for silver for Philippine coinage ranged from 49.10 to 60.47 cents,—an appreciation of over 21 per cent in that period.

As to the argument based on the assertion that the Act of 1894 was an act "to provide revenue", and hence would not contain a provision calculated to take prompt note of diminishing silver values, lest thereby revenue should be lessened, it wholly overlooks the fact that the act was entitled "An Act To reduce taxation, to provide revenue for the Government, and for other purposes". The *reduction of taxes* was the first declared purpose of this law, and its intent was carried out, toward the products of India, to such effect as to place almost every one of them on its free list. Appellants' counsel purveys a lively picture of the Treasury's distress at the way the pure metal valuation was affecting imports from India; the daily injustice of it; the crying need of a better system in the Act of 1894. It nowhere appears that the Secretary so much as asked Congress to make the change, and it does appear that when it had been made, the Treasury did not construe it as having any such effect as is now contended, but for years thereafter, went on the theory, as already pointed out, that Sec. 2903 continued to afford the only means of taking up the fluctuations of exchange. This is shown in the following published Treasury ruling.

(15606.)

Valuation of Mexican Dollars in Puerto Rico.

TREASURY DEPARTMENT, February 8, 1895.

TO COLLECTORS AND OTHER OFFICERS OF THE CUSTOMS:

The Department has been advised by the Director of the Mint that, owing to the prohibition by the Spanish Government of further importations of Mexican dollars into Puerto Rico, the said dollars have come, by reason of the resultant scarcity in that country, to have a value greater than that of the pure silver contained therein and consequently greater than that proclaimed by the Director of the Mint. It follows, therefore, that whenever an importation of sugar from Puerto Rico is appraised at the mint value of the Mexican

dollar it is appraised too low, an unjust discrimination against sugar imported from other places resulting.

The Mexican standard dollar is the coin in circulation in Puerto Rico, and section 2 of the act of June 10, 1890, is as follows:

"That all invoices of imported merchandise shall be made out in the currency of the place or country from whence the importations shall be made or if purchased in the currency actually paid therefor, shall contain a correct description of such merchandise, and shall be made in triplicate or in quadruplicate in case of merchandise intended for immediate transportation without appraisement, and signed by the person owning or shipping the same, if the merchandise has been actually purchased, or by the manufacturer or owner thereof, if the same has been procured otherwise than by purchase, or by the duly authorized agent of such purchaser, manufacturer, or owner."

Section 25 of the act of August 28th, 1894, provides as follows:

"That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint, and be proclaimed by the Secretary of the Treasury immediately after the passage of this Act and thereafter quarterly on the first day of January, April, July, and October in each year. And the value so proclaimed shall be followed in estimating the value of all foreign merchandise exported to the United States during the quarter for which the value is proclaimed, and the date of the consular certification of any invoice shall, for the purposes of this section, be considered the date of exportation: Provided, That the Secretary of the Treasury may order the reliquidation if any entry at a different value, whenever satisfactory evidence shall be produced to him showing that the value in United States currency of the foreign money specified in the invoice was, at the date of certification was, at least ten per centum more or less than the value proclaimed during the quarter in which the consular certification occurred."

Notwithstanding the enhanced value of the Mexican dollar in Puerto Rico, such value remains below the nominal value of said coin, which may consequently be regarded as a depreciated currency and be treated under the regulations of the Department governing such currencies.

The Treasury's own promulgations, T. D. 24318, 24531, 24690, dated respectively April, July, and October 1, 1903, show appreciations of silver of over 9 per cent. and of 6⅛ per cent. respectively in the quarter years therein reported.

The Department of State has been requested to instruct the proper United States Consuls to certify the money value of the Mexican dollar as hereafter used in invoices from Puerto Rico, and offices of the Customs are hereby instructed to liquidate entries covering such invoices at the value so certified.

It is proper to remind local appraising officers that their returns of the value of imported goods must be made in the currency set forth in the respective invoices, and that the reductions of foreign currencies to the money of account of the United States in the adjustment of variations in the value of foreign moneys under the provisions of section 25, above quoted, devolved solely upon collectors of customs. Computations as to the United States value of invoice currencies are not germane to the functions of appraisers.

This intimation is promulgated because contentions have, in some recent instances, arisen from the action of appraisers in contravention of the above rule.

CHARLES S. HAMLIN,
Acting Secretary.

If the proviso had been passed to enable the Secretary to collect duties on the full exchange value of goods invoiced in rupees, can we for a moment doubt that his office would at once avail of it? Assistant Secretary Hamlin, then in office, was highly familiar with the currency aspects as with all other aspects of the duty laws, and probably drew the new provisions of Sec. 25 and its proviso. Yet we see that within a few months after the Act was passed, the first case of an inflated exchange value which occurred, was disposed of by him on the theory that Sec. 25 and its proviso did not cover it, and his office adhered to this view for nearly three years, as shown by the decision T. D. 17107, published at page of this brief, and by T. D. 17766, dated February 3, 1897 (*supra*, p.).

A still further improbability is perceived in the appellant's contention as to the fiscal effect desired with regard to Indian imports by the enactment of 1894, when we observe that practically every important subject of such import was either put on the free list, where were found hides (paragraph 505), raw skins (505), wool (685), jute (497), tin (653), gunny cloth (392½) and burlaps (424½), or else was dutiable at a specific rate, wholly unrelated to the value, as in the case of linseed, taxed at 20 cents per bushel (paragraph

206). Nothing appears to have been left dutiable by value except certain tanned skins, at 10 per cent (341), and of these India sent us in 1894 only $1,054,000, or about 6 per cent. of her total shipments.* Thus we are asked to believe that Congress in 1894 had not its attention focussed on such tremendous fluctuations of silver value as 20 percent in ten days, though wholly unprovided for in the then existing system, despite the effort to do so by the amendment of 1890, and though these convulsions were world-wide,—but did legislate with sole regard to the avoidance of inequalities in the calculation and assessment of $100,000 of duty per year on East Indian skins for morocco. In view of the fact that the most obvious reading of the proviso, and its place in and relation to the statutes, and the method it created, all refer the mind directly to bullion fluctuations, we cannot believe any such theory will meet the approval of this Court.

In fact, substantially the entire pecuniary importance of this rupee controversy has accrued under the Tariff law of 1897, whereby many Indian exports were placed in the *ad valorem* duty lists. Unless Government counsel contends that the amendments of August 1894 were made with a prevision of the duty law of 1897, the entire argument as to their importance to protect the revenue falls to the ground.

The contention that the action of the Secretary, because it followed the language of the proviso to Section 25, was final and conclusive and cannot be scrutinized even to see what it really was.

In the first section of their brief, Counsel seriously contend that *any* action by the Secretary of the Treasury, *purporting to be* in pursuance of the proviso to section 25, is final and conclusive, irrespective of the grounds on which such order is based or its fundamental legality or illegality. In support of this somewhat extraordinary doctrine counsel have cited the same decisions of the Supreme Court bearing upon the construction and effect of the valuations contained in the proclamations of value, which we have already cited and discussed.

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* "Imports and Exports of merchandise" *supra*, p. .

Judge COLT, in his opinion in the second Bebee case (117 F. R., 670, at pages 674-5-6) carefully analyzes the decisions in these four cases and reaches the following conclusion :

> " In all these cases it will be observed that the Director of the Mint, acting within the scope of the powers conferred by statute, made his estimates on the pure-metal basis. It is manifest, therefore, that the rule of conclusiveness laid down in these cases goes to this extent, and no further: Where the pure-metal values of foreign standard coins as provided by the statute have been estimated by the Director of the Mint and proclaimed by the Secretary of the treasury, such values are conclusive, and cannot be impeached by evidence of mistake or miscalculation. In other words, the pure-metal estimate by the Director of the Mint, as a fact found, is final, and the Collector's action in conformity with such finding is not subject to judicial review, either under the old law, where the importer brought suit against the Collector in the circuit court to recover the duties paid, or under the customs administrative act of 1890, where an appeal is taken from the Collector's decision to the Board of General Appraisers. Assuming the word 'value' in the proviso of section 25 to mean 'value in pure metal,' as the court has already determined, the doctrine of conclusiveness applied to reliquidations goes to this extent, and no further: The order for reliquidation of an entry by the Secretary of the Treasury upon evidence satisfactory to him, based on the required difference between the pure-metal value of the foreign money specified in the invoice and the proclaimed value, is conclusive, and the action of the Collector thereunder is not reviewable by the Board of General Appraisers or the courts."

In these cases no question was or could be made but that the Secretary had sought to proclaim the pure metal value either in terms of U. S. gold or silver dollars, of the foreign money in question. The statute was unambiguous, and it definitely declared " that the value of foreign coin as expressed in the money of account of the United States, shall be that of the pure metal of such coin of standard value."

Under this clear enactment the Supreme Court held in the cases referred to, that the valuation proclaimed *pursuant to this statute* was conclusive. It was in each case the importer who sought to avoid the conclusiveness of the proclamation, and in each he had all the reasons as to assessment on actual market values, equality between different foreign nations, etc., which petitioner can adduce in this case. But the Court said the law made the proclamations

final *against all parties*, and this includes the Secretary just as well as the importer. Now, the Secretary himself ignores the proclamation, and these cases are sought to be availed of as authority for the finality of his action. The position of counsel for the Government with respect to the proviso, we understand to be this; the word "value" in the proviso is ambiguous, being open either to the meaning claimed by the importers, viz., the value of the pure metal, or, to a broader meaning claimed by the Treasury Department—that the Secretary is not limited to ascertaining the value of the pure metal, but may use other bases of valuation inconsistent therewith. But that whatever be the true meaning of the statute, it must be conclusively presumed that the Secretary's action was pursuant to it.

On this question of construction a controversy has existed for several years between the Treasury Department and the importers, the courts in every case, when the question has been presented to them, deciding in favor of the narrow and conservative construction which they demanded. In the light of these decisions, it surely cannot be asked that this court shall refuse to scrutinize the said order and the facts leading up to it, before pronouncing it final. It is clear that all chance of such finality depends on the answer to a prior question, viz: what did the Secretary really do?

It is impossible from reading the Secretary's letter in connection with other correspondence and acts which preceded it, and *of which it formed a part*, not to reach the conclusion (which admittedly is the fact), that the alleged difference on which it purports to be based was not that of the metal in the coin. On Sept. 4th, 1897, the Secretary officially announced (T. D. 18327) that the actual exchange value of the rupee, and not the proclaimed value, would be taken as a basis for estimating duties on goods from India.

In pursuance of this policy, Collectors were directed to disregard the pure metal value of the rupee, and to take the value certified by the Consul (*i. e.* the exchange value, as expressly declared in the consular certificate).

These rulings were in force when the present shipment and entry were made, and pursuant to them, on July 11, 1900, duty was liquidated by converting the silver rupee of the invoice at this exchange value, against which liquidation the importers protested, on the ground that the proclaimed value should have been taken.

On September 26, 1900 (T. D. 22,511), the Treasury Department

instructed Collectors to disregard previous instructions of the Department *(to liquidate according to the value stated in the consular certificate)*, and in future "you will be governed solely by the value proclaimed. * * * for the quarter. * * * If such proclaimed value is *less than that shown by the consular certificate accompanying the invoices* you will report the fact immediately to this department, so that a reliquidation should one be deemed necessary may be ordered and the collection of the increased duties chargeable on such importations secured."

In other words, while adhering to its purpose of compelling importers to pay duties upon the basis of the exchange value certified by the consul, by this circular the Department announced its purpose of varying its procedure to reach that result, namely, to abandon liquidation at the exchange value in the first instance, but to reach the same result by an original liquidation at the proclaimed pure metal value and follow this up immediately by reliquidation at the exchange value certified by the consul.

On May 18, 1901 (T. D. 23,059), the Department issued its circulars to the Collectors as to all entries of merchandise in rupees made within one year prior thereto *not* liquidated at the proclaimed value, to reliquidate such entries at the proclaimed value. "Immediately thereafter (reliquidation) all the papers will be forwarded to the Department for such action as it may deem proper *in accordance with the instructions of September 26, 1900.*" (Quoted above; *i. e.*, to reliquidate at the exchange value certified by the consul.) "*No refunds are to be made pending the receipt of further instructions from the Department.*" The papers accordingly were sent to the Department by the Collector and on June 6, 1901, the Department returned them with a letter stating that satisfactory evidence had been produced to the Secretary of the Treasury showing that the value of the rupee was at the date of shipment 32 cents and directing a reliquidation accordingly.

Apparently no other evidence was produced to the Secretary beyond the statement of exchange value in the consul's certificate. Manifestly that was all the evidence the Secretary wanted, from the tenor of his letter of September 26, 1900, for the only purpose of the Secretary was by a different and roundabout procedure to restore the original liquidation of July 10, 1900, at the exchange, value and this was done. Admittedly the original liquidation was at the exchange value, and obviously the purpose of the order of June 6th, construed in the light of the decisions of the Department regarding

this very importation, and all like importations, was to restore that liquidation at the exchange value, and it did so. And while Government counsel at some parts of their brief make much of the point that we cannot properly know, but that the Secretary had satisfactory evidence of a 10 per cent. change in silver value itself, between April 1 and April 19, 1900, at other parts they repeatedly concede the resort to exchange, and notably on page 39, they assert: "*since July 1, 1893, there has not been a change of 10 per cent. in the market price of silver in any quarter year.*"

Under these circumstances no court should hold that under this statute, which counsel for the Treasury themselves claim is ambiguous, a pretended finding of fact, purposely sufficiently ambiguous by itself to include two meanings, but in fact based on an entirely erroneous construction of the law, is to be conclusively presumed to mean something absolutely and entirely different from what the Secretary meant by it. If this be true, whatever the Secretary declares he does in the name of the statute, though admittedly in violation of the statute, and unlawful, is unassailable and unimpeachable. We confidently submit that such is not the law.

Even if it be true, as counsel for the Government contend, that valuations in proclamations, irrespective upon what basis they are made, and what they purport to be, are conclusive, that is no reason for extending this power to the action of the Secretary under the proviso.

The tables of estimates contained in the quarterly proclamations, are a substitute for the statutory enactments of value which preceded them. They are the basis on which all foreign moneys are to be reduced into U. S. currency for the purpose of the assessment of customs duties. At most the proviso affords a remedy in individual cases under certain conditions. The Secretary may exercise the power when he pleases; it is special and not universal as is the case of proclamations. The proviso gives the Secretary a discretionary right which he may or may not exercise in certain given instances. If no restraint can be placed on the Secretary in acting under this power, the rights of importers are absolutely at the mercy of the will of the Secretary for the time being. He may override the general law relating to the conversion of foreign money, as he has done in this case, and substitute a valuation of his own for the one prescribed by the statute;—he may make this valuation, if he pleases, apply to some importers and not to others, permitting a favored few to pay their duties at the proclaimed value, and com-

pelling others to pay duty at the exchange or some other value recording as he desires.

"If the doctrine of conclusiveness goes to this extent, then the importer is no longer governed by the laws which Congress enacts, but by the Secretary's interpretation of them." *Opinion in Beebe's case, 117 F. R., 670.*

Counsel for the Government, under the first section of their argument, undertake to distinguish between the Beebe case and this case, on the ground that the facts in the Beebe case were stipulated, (and which stipulation is printed for the court's convenient reference, as Appendix A. hereto annexed) whereas there is no stipulation of facts in the present case. The fact is, as well known to petitioner's counsel, that after this court denied the writ of *certiorari* in Beebe's case, a plan was adopted by all counsel, to send that case again into the courts, after reliquidating the entry twice —exactly as was done here—for a decision which should be conclusive on the whole issue. And to that end the facts, *as they were in all the cases*, were solemnly stipulated in Beebe's case. We conceive that the only difference in the two records is this:—that in the Beebe case the Attorney General freely conceded what were unquestionably the facts, while in this case counsel for the Government have vainly sought to suppress facts which are abundantly self-evident, and which, stipulation being declined, have been duly and amply proven. The resort to this practice, and the choice for presentation in this court of a case differing from the great mass of the rupee claims, at present sequestrated in the Treasury Department, in several particulars upon which the Government counsel lay stress, however much or little importance we may think they have, —all these are at least curious commentaries on the assertion with which the Government brings this case here, viz.: that it is selected as one properly presenting *all the aspects* of this controversy, and one on which the Supreme Court should, therefore, be asked to express its judgment.

Fortunately for the ends of Justice, the fact, as already stated, was self-evident; it was set forth in the published official proceedings, lasting through years in all of these cases, and emanating from the Secretary's own office; it was unmistakably demonstrated by publications of the same office, not intended to affect these cases, but officially denying those fluctuations in silver values, upon the sorry pretense of which,—the bare assertion that they *might* have

occurred, for all their admissions to the contrary,—the petitioner's counsel are compelled to stand.

In a word, then, the question propounded above must be answered, as absolutely proved and conceded,—the Secretary repudiated the pure metal value of the rupee and ordered it to be reckoned at its exchange value. That order can surely be reviewed and measured by the true meaning of the statute, and if not warranted hereby, will surely be condemned.

The general law with reference to the legal effect of the acts of an official, entirely supports the claim that the Secretary's action is reviewable.

One of the latest cases on this subject is:

American School of Magnetic Healing vs. McAnnulty, 187 U. S., 94.

That case arose under Section 3929 of the Revised Statutes, which reads as follows:

> The Postmaster General may, *upon evidence satisfactory to him* that any person is engaged in conducting any fraudulent lottery, gift, enterprise, or scheme for the distribution of money, etc. * * * instruct postmasters at any post-office at which registered letters arrive directed to any such person to return all such registered letters to the postmasters at the offices at which they were originally mailed. * * *"

The plaintiff conducted by correspondence the business of teaching the science of healing human ills. The Postmaster General decided that the business was a fraudulent one, and directed the postmasters to withhold mail matter sent to the plaintiff through the mail. The plaintiff then brought a bill in equity alleging these facts and that the business was a legal and legitimate one. The defendant demurred to the bill on the ground that the court had no jurisdiction because the statute gave to the Secretary alone jurisdiction to decide whether the act was fraudulent. The court overruled the demurrer in an able and instructive opinion by Mr. Justice PECKHAM, in the course of which (p. 108) he answers the argument of counsel for the Postmaster General, which is identically the argument of Government counsel in this case.

> "That the conduct of the Post Office is a part of the administrative department of the government is entirely true, but that does not necessarily and always oust the courts of jurisdiction to grant relief to a party aggrieved by any action by the head or one of the subordinate officials of that department which is unauthorized by the statute under which he assumes to act. The acts of all its officers must be justified by some law, and in case an official violates the law to the injury of an individual the courts generally have jurisdiction to grant relief."

And in the concluding sentence the court says, "In overruling the demurrer we do not mean to preclude the defendant from showing on the trial, if he can, that the business of complainant *as in fact conducted* amounts to a violation of the statutes as herein construed" (Opinion, p. 111). We confidently submit that this decision is an absolute and complete reply to everything that can be said in favor of the lack of jurisdiction of the Board of Appraisers to set aside the reliquidation in this case.

So it has repeatedly been held that the actions of customs appraisers are conclusive only when their proceedings are according to law. In

Robertson v. Frank Brothers, 132 U. S., 17–24,

the Court said:

> "But it is contended that the act of the appraiser in making, or requiring to be made, the additional charges for transportation and labor was final and conclusive, and cannot be made the subject of inquiry. It is undoubtedly the general rule that the valuation of merchandise made by the appraiser, unappealed from to merchant appraisers, is conclusive. But whilst this is the general rule, it is subject to the qualification that if the appraiser proceed upon a wrong principle, contrary to law, and this be made to appear, his appraisement is not unimpeachable. This qualification applies to the acts of many other officials charged with duties of a similar character."

In

U. S. v. Passavant, 169 U. S., 16–21.

> "While the general rule is that the valuation is conclusive upon all parties, nevertheless the appraisement is subject to

be impeached where the appraiser or collector has proceeded on a wrong principle contrary to law or has transcended the powers conferred by statute" (169 U. S. 16, 21).

See, to same effect,
Muser v. Magone, 155 U. S. 240–247.

So with reference to officers of the Land Department.
Shepley v. Cowan, 91 U. S. 330–340.

Wherein Mr. Justice FIELD pointed out that if these officials "err in the construction of the law applicable to any case, * * * their rulings may be reviewed and annulled by the courts * * * but for mere errors of judgment upon the weight of evidence in a contested case before them the only remedy is by appeal from one officer to another of the department."

So as to the Secretary of the Treasury.

Morrill v. Jones, 106 U. S., 466:

"The Secretary of the Treasury cannot by his regulations alter or amend a revenue law. All he can do is to regulate the mode of carrying into effect what Congress has enacted. In the present case we are entirely satisfied the regulation acted on by the Collector was in excess of the power of the Secretary. The statute clearly includes animals of all classes. The regulation seeks to confine its operation to animals of 'superior stock.' This is manifestly an attempt to put in the body of the statute a limitation which Congress did not think it necessary to prescribe."

It is noteworthy that in this case also, there existed the feature of an order (regulation) by the Secretary, on which the Collector acted ministerially only. Yet this interposed no obstacle to the Supreme Court sustaining the tax payer's protest against the Collector's action on such regulation.

And see
Merritt v. Welsh, 104 U. S. 694.
American Sugar Ref. Co. vs. U. S., 181 U. S. 610.
Downs vs. U. S., 187 U. S. 496.

Executive officials have a dangerous tendency to assume power and to exceed their powers. Congress has not favored it, and the courts have repeatedly corrected and rebuked it.

Christy vs. Unwin, 3 Per. Dav., 208.
Galpin vs. Page, 18 Wall., 350.
Marriott vs. Brune, 9 How., 634.
Greeley vs. Thompson, 10 How., 225.

No principal is more cherished by this court, or more clearly and oft asserted in the above cases, than that the evidence on which men are taxed, or their rights restricted, must be reviewable in the tribunals of law.

The history of the present issue shows forcibly the need of such safeguards, and that the Treasury officials, doubtless in the utmost good faith, and believing their acts meritorious and within the statute, have repeatedly exceeded their powers duly conferred by law. Thus:

A. The Mint Director, empowered by Congress merely to ascertain the metal values of foreign moneys, went wholly beyond his power when, in the foot-note to his table of metal values, he suggested the ignoring of these, which Congress had ordered should be followed.

B. The Secretary of the Treasury transcended his powers when, by the circulars above quoted, he ordered that all duties on Indian goods be calculated according to exchange values as certified by our consuls. Be it remembered that at first he did not even trouble to "order reliquidation," but asserted that the proviso to section 25 warranted an order given prospectively, as to all entries.

C. The Secretary again transcended his powers when (Treas. Decn. 17766) he ordered that protests against such exactions should not be submitted to the General Appraisers, as section 14 of the act of June, 1890, directs that they shall, but should be forwarded to him.

D. Again he exceeded his power when (Treas Decn. 18110) he proceeded to decide such protests adversely, against the specific provision of the same law, that the General Appraisers shall decide them.

Pursuant to this surprising policy, the petitioner asks this court to perceive error in the many rulings already made upon this issue, because they scrutinized the Secretary's actions, and thereupon found them illegal. Is an official who has made this record, a proper depositary of the vast power of deciding when the conditions warrant him in repudiating the standard of value adopted

by Congress, and adopting such other as he sees fit? And that, without any right of review?

Greely v. Thompson, 10 How., 225 (234),

in reference to the orders of the Secretary, therein held to be binding on Collectors, is pertinent upon this point:

> "Such action must be deemed valid or not as to third persons, according as the Collector possessed legal power to make it on the facts of the case. The orders as well as the opinions of the head of the Treasury Department, expressed in either letters or circulars, are entitled to much respect, and will always be duly weighed by this court; but it is the laws which are to govern rather than their opinions of them, and importers, in cases of doubt, are entitled to have their rights settled by the judicial expositions of those laws rather than by the views of the department; and though, as between custom house officers and the department the latter must by law control the course of proceeding, yet as between them and the importer it is well settled that the legality of all their doings may be revised in the judicial tribunals."

What Power, if any, had the Secretary of the Treasury to Repudiate the duly Ascertained and Proclaimed Pure Metal Value of the Rupee, Outside the Terms of the Proviso to Section 25?

A large part of the brief of Government counsel is occupied with a seeming assertion of some general power of this sort, and with the elaboration of alleged equities, grounds of international law and treaty, and similar supporting propositions as warranting the exercise of it.

It is safe to assert that if any such power exists in the Secretary, it must have been conveyed to him by some distinct enactment of Congress. None of our executive officers is the custodian of the rights of foreign nations under their treaties with us, and no broad power for the enforcement of such rights or of general equities can for a moment be conceded to these officials, nor indeed any whatever, such as cannot be traced to and identified with a distinct enacting source. "The acts of all its officers", said this court in the McAnnulty case *(supra)*, "must be justified by some law."

It is asserted on page 28 of the Government brief, that the

Secretary of the Treasury has an undoubted right to correct, within one year of the entry, any error committed in liquidation. No statute is cited in support of this assertion, but a reference is made to certain language found in the decision of this court in Hadden v. Merritt *(supra)*. It would be an astonishing theory, to base upon this language the conclusion that this court deems the Secretary's office endowed with unbridled power in matters pertaining to the operation of the customs laws as to foreign currencies, and wholly divorced from any need of distinct statutory authority. The language in question having asserted that the only remedy for those dissatisfied with the operation of the statutory currency proclamations, confided to the Secretary by law, was to appeal to the Department itself, is it not the manifest, as well as the only safe interpretation of this language, to hold that it suggested steps to be taken in the Secretary's office with a view to the correcting of the next ensuing statutory proclamation? that the Secretary be urged when next he had the right to act, that he so act as to correct the wrong?

Sec. 21 of the Act of June 22, 1874, cited elsewhere by Government counsel as though it were a law endowing the Secretary with power, gives him no right whatever to order reliquidations within one year from the date of entry, but is a statute of rest, prescribing limitations to the time within which he must exercise powers found elsewhere in the laws (U. S. v. Leng, 18 Fed. Rep. 15). The patent fallacy of the petitioner's argument is in supposing that in reliquidations within one year, the Secretary is any more freed from obedience to the laws than in the first liquidation. It is certain that there is no such freedom, but that the second, or tenth liquidation, however legal as to timeliness, is as subject to challenge for violating other terms of the law, as is the first. If the specific terms of our laws as to foreign currency values, as they stood in April or June 1900 or in June 1901, warranted the assessment herein complained of, then it did not need any general power of the Secretary to support its legality. But if they were violated by it, no such general power exists in the Secretary as could validate his and the Collector's illegal act in overriding them.

While, as pointed out, no power is conferred by the Act of 1874, one broad power is confided in the Secretary of the Treasury by statute with regard to the customs laws. We refer to Section 251 of the Revised Statutes, originating as the Act of Feb. 10, 1820, and which authorizes him to prescribe

"rules and regulations, not inconsistent with law, to be used under and in the execution and enforcement of the various provisions of the Internal Revenue Laws, or for carrying out the provisions of law relating to raising revenue from imports or to duties on imports, or to warehousing."

From this it appears that in the only law whereby Congress has ever confided the necessary authority to the Secretary for enforcing the customs laws, it saw fit to confide it subject to the express conditions that it should be exercised in a way *not inconsistent with law*. Can it, in the face of this language, be reasonably contended that this official possesses an unlimited power to accomplish what he may deem justice as between importers from different countries, or between such importers and our Government, in defiance of the express letter or the clear intent of the customs laws?

Again, such power as the Secretary now has under this provision of the statute--and we deny that he has any other—he has had ever since 1820. It was his at all the times when the currency cases, and all the other important cases on official prerogative, came before and were passed upon by this court. Yet, throughout the decisions in all those currency cases, nothing was more clear or more forcibly asserted than that the proclaimed values were binding and conclusive on *all parties*, and as the Secretary of the Treasury is indisputably a party to every collection of duty for the uses of the Government, these decisions clearly assert the controlling force of the statutory proclamations upon him. This court is now asked to hold that at all those times the said proclamations were binding upon the importers only, while the Secretary was always at liberty to reject them, provided it were contended (and it always could be contended) that the proclaimed values accomplished unequal or inequitable results, or involved error or mistake.

And in all the other Treasury prerogative cases, the same resort to some vague, general alleged power was equally in order, and was repeatedly made by counsel in argument, and the statute of 1820 just as well lent itself to them as to this case. But this court has steadfastly and consistently enforced the rule of *no power save by statute, and no statutory power freed from statutory limitations.*

In

Merritt v. Welsh, 104 U. S. 649,

was concerned a typical case of this sort.

The tariff statute of 1875 (18 Stats., 339), provided various

duties on sugar according to its quality by "Dutch standard of color," and provisos imported from other acts, distinctly referred to the Secretary of the Treasury the selection of standards by which the color and grades of sugar were to be determined. Under this statute duties were charged on certain sugars, under general instructions from the Treasury Department, at rates wholly other than those to which they would have been referred by the Dutch standard, and the Government contended that this was warrantable, because the sugars had been artificially colored so as to reduce them, according to the Dutch standard, below the grade to which they belonged according to the amount of crystallized sugar which they contained, as shown by chemical test by the polariscope.

This court sustained the importers' protest against this, holding that it was the right of merchants so to adjust their goods and their transactions therein as to make them meet the terms of the law upon the most favorable basis. The Court added:

> "If the duties are affected there is a plain remedy. Congress can always adopt such laws and regulations as it may deem expedient for protecting the interest of the Government. If in the case under consideration a color standard is insufficient a different one is ready to hand: that of the polariscope or other chemical test. If the quantity of saccharine matter in sugar, or its state of advancement from the raw state to a condition of refinement, is desirable as a dutiable standard let it be so declared by the laws, and then the merchant will know on what he has to depend. Uncertainty and ambiguity are the bane of commerce. Discretion in a customs officer should be limited as strictly as possible. It has been said with much truth 'where law ends tyranny begins. * * * If experience shows that Congress acted under a mistaken impression that does not authorize the Treasury Department or the courts to take the part of legislative guardians, and, by construction, to make new laws which they imagine Congress would have made had it been properly informed, but which Congress itself, on being properly informed, has not, as yet, seen fit to make. * * * A better remedy than that of making a forced construction of the law is in the power of Congress. All that has to be done is, to change the law so as to reach the goods in their new form, if it is thought desirable to do so. If the law is found defective, let it be altered so as to attain the result desired."

In the last Beebe case, the Circuit Court touched upon this point as follows:

> "The Secretary of the Treasury, the Collector of Customs, the Commissioner of Patents, the officers of the Land Department, and all officers of the Government charged with official duties must proceed according to law. Within the scope of their statutory power their acts may be final and conclusive, but acts which are based upon a wrong construction of the statute or which proceed from following a wrong principle, contrary to law, or which flow from an assumption of authority or jurisdiction not conferred by statute, have never been held to be conclusive and unimpeachable."

Again, we are told that the constant policy of all tariff legislation has been to secure the assessment of duty on the true foreign market values of imports. In answer we assert that if this has been the policy of our legislation, it has always been subordinated or modified to exactly such extent as is represented by the specific and mandatory enactments of the "fixed rule of computation" for the values of foreign currencies, of which, as already pointed out, the first was a part of the very section, in the duty law of 1789, wherein the foreign market value system was also created. So that in 1789 it was enacted, and has ever since been the law, that appraisement, in the foreign currency, should proceed on the foreign market value, but that translation of the foreign currency should proceed according to its pure metal value in terms of our own. Neither on the statutes nor in the decisions of this court can be found any support for the contention that because the true foreign market value of imports was enlarged or diminished by adherence to the valuations of foreign currencies as enacted by Congress, or later as proclaimed by the officials in pursuance of the carefully restricted delegation of power by Congress, therefore were those valuations open to be discarded as illegal or inequitable. On the contrary, the decisions of this court in the currency cases repeatedly and forcibly point out that the "fixed rule of computation" was binding on all parties, that it was just and equitable in the long run, and that it was far more important to the Government and to merchants, to know upon what basis they were to depend for the valuation of the invoice currencies, than that either should be subjected to the "fictitious par of exchange maintained by bankers", or to any capri-

cious and fluctuating practice such as would put the reckoning of duties at sea.

We are surprised at the contention, raised in the Government brief, that even if Section 25, and its proviso, gave the Secretary no such power as he purported to exercise in the valuation of the respondents' rupees, yet the condition of the Indian currency laws at the period of this exportation was such as to warrant him in repudiating his own solemn proclamation, made strictly pursuant to law and covering the period in question. Aside from the absolute absence of proof to support the allegations on this point—which we will discuss presently,—is it not intolerable that the Government counsel should discover and should press upon this court, nearly five years after the transactions in question, alleged circumstances as tending to validate those transactions, absolutely other than and foreign to those which the Secretary then had in view?

The Secretary rested his right to make the liquidation order in question on Section 25 and its proviso. He claimed no right to do this by virtue of any other powers expressed or inherent.

We respectfully submit that the Secretary cannot now, at this time, defend the legality of his action on grounds other than he himself put it on in making the order.

But of this alleged new ground for the Secretary's emancipation from pure metal values, viz., that in true fact the standard of India's currency was not silver, nor the rupee, at the time of this exportation, but was gold and the sovereign, the whole record does not contain one scintilla of evidence. As heretofore pointed out, we deem it surprising that this point should be raised,—applicable as it is to only a small proportion of the pending rupee claims,—in this case which the Government has selected *as raising all the issues.* But passing that, and passing also the surprising objections made throughout this case to the introduction of duly produced and legal evidence by the importers, we cannot think that this court will give its approval to the *mere allegation* by the Government counsel that the condition of the Indian currency laws in the year 1900 was such as to show the Mint Director's ascertainments and the Secretary's proclamations in the early part of that year to have been erroneous. Government counsel stoutly maintain that these official documents are final and conclusive against all parties, and must necessarily hold that even upon the due production and acceptance of conclusive proofs of their being erroneous, it is outside the power of the courts to pronounce them so. Do they conceive that it is consist-

ent with this attitude, to propose that this court shall find the official pronouncements to have been erroneous *without the production of any evidence whatever to that end?* The law of India, we submit, is a fact which is to be proved like other facts in the case, and in this case there has not been the slightest attempt to prove it. This, it seems to us, is of a piece with the conception that the official action of the Secretary in 1900 and 1901, then taken by him upon one distinctly announced ground of alleged law, can four years afterwards be validated upon another ground which the Secretary never thought of.

But passing beyond all these considerations once more, and alleging, for the sake of argument, our understanding of the Indian currency Act of 1899, we believe it will be found to have no further effect upon the legal tender situation in that country, than to recognize gold as one such legal tender, and not in the least to repudiate or dethrone silver as another. Nothing in it affects the silver rupee as one of the "standard coins in circulation of the various nations of the world." The statute in question merely enables a man having a sovereign to pay a debt of 15 rupees; it does not enable a man who has 15 rupees to discharge an obligation amounting to one sovereign. Therefore it does not raise the value of the rupee to one-fifteenth that of the sovereign, any more than the present condition of our own currency Acts raises or alters the intrinsic value of our silver dollar so as to make it equal to that of the gold dollar. A fictitious appearance of value may by such a law be given to a metallic currency, strictly comparable to the "fictitious par of exchange" referred to in the case of Arthur v. Richards *(supra)*, but when we come to contemplate the "value of the pure metal contained" in such currency, measured as this must be in the broad international bullion market of the world, we find it as the Mint Director and the Secretary duly and properly found it, wholly unaffected by the fiction of law. We have carefully examined appendices G, H, I and J of the Government brief, purporting to quote the relevant parts of the Indian Acts, and we confidently assert that they leave silver and the rupee wholly untouched as the standards of India. Indeed, the Government counsel seems to perceive this, for their statement at pp. 28–29 is that rupees have not, since 1899, "in *any proper sense* been *such* standard coins in circulation" as to warrant the promulgation of April 1, 1900.

Another conclusive answer to the contention of distinguished counsel that India was on a gold standard on April 19, 1900, is the

proclamation of July 1st, 1900, in which again the Director of the Mint and the Secretary of the Treasury declared India to be on a silver standard, and the silver rupee its principal coin. Can it be that an importer when purchasing his goods cannot rely on the solemn proclamation of the Secretary of the Treasury for the quarter in question that India is on a silver standard, but must take into consideration the possibility that the Secretary may change his mind, and when the goods arrive decide that for six months India has been upon a gold standard? Or, in other words, as is the case here, was India for over a year after the passage of the act of 1899 until the proclamation of October, 1900, upon a silver standard for the purpose of making the original liquidations, but upon a gold standard for the purpose of reliquidation? In this muddle, with the Secretary setting up one standard in one breath and taking it back the next, how can any importer tell when he purchases his merchandise what the duties are going to be.

Since the silver rupee remained, in April and in July, 1900, a standard coin in circulation, there was evidently no error made in proclaiming its pure metal value. And, indeed, it would seem to involve treating these solemn official proclamations with surprising flippancy, made as they were not merely by authority of Congress but pursuant to its mandate, and put forth as such to inform the business world what reckoning would be applied to their rupee invoices—to assert that they could be rescinded six or nine months later in behalf of better information or a newly adopted official view.

But it seems unwarrantable to prolong discussion upon this matter of the alleged Indian coinage law of 1899. This court is wholly without judicial means of knowledge that any such law was enacted; much less, as to its precise contents, if enacted, or its bearing upon this controversy, if any. And as under its own repeated decisions the court would unquestionably hold, even were such law duly proven into the present record, and even were it then found flatly contradictory to the ascertainment and proclamation of April 1st, 1900, that neither the Secretary nor the importer could legally impeach such ascertainment and proclamation by means of it, it is manifestly wholly immaterial to debate the matter.

It is respectfully submitted that the decision of the Circuit Court of Appeals for the fourth circuit was correct, and should be affirmed.

ALBERT COMSTOCK,
WILLIAM R. SEARS,
Counsel for Respondents.

ALDIS B. BROWNE,
HOWARD T. WALDEN,
PAGE, MCCUTCHEON, HARDING & KNIGHT
of Counsel

Sections 2366, 3474, 3576, Revised Statutes, provide that foreign coins shall be accepted *in payment for public lands* at the values proclaimed under section 25 and its predecessors

APPENDIX A.

UNITED STATES OF AMERICA,
District of Massachusetts. } ss.

BEFORE THE BOARD OF GENERAL APPRAISERS.

LUCIUS BEEBE & SONS,
Importers

vs.

THE UNITED STATES OF AMERICA.

It is hereby agreed by and between the United States of America, by Henry M. Hoyt, Assistant Attorney General, its attorney and said Lucius Beebe and Sons, that the following propositions of fact may be taken as true ;

I.

The importation in this case consists of twenty-seven bales of tanned skins, shipped to Boston, Massachusetts, from Madras, India.

II.

Said merchandise was included in two invoices, one dated August 11, 1898, for thirteen bales of skins, and bearing Consular number 1610, and the second invoice for fourteen bales of skins, dated August 31, 1898, and bearing Consular number 1611, and showing a total value for said twenty-seven bales of skins, together with certain non-dutiable charges, as follows ;

Rupees ; 18.338/5/2.

III.

Said goods were entered in the port of Boston for consumption, on the 18th. day of October, 1898, by Julius Beebe, Marcus Beebe and Decius Beebe, co-partners, doing business in said Boston, under the name and style of Lucius Beebe & Sons.

IV.

After deducting from the invoice value the sum of rupees, 628/5/9, for non-dutiable charges, the entry value is made out as follows;

In rupees, 17,709/15/5.

V.

The invoice dated Madras, August 11, 1898, bears the following certificate of A. H. Deane, Acting Consular Agent of the United States at Madras, India, dated the 11th. day of August, 1898:

"I further certify that the exchange value of the rupee, in "which currency the annexed invoice of merchandise is made out, "is at this rate 32.11 cents, stated in United States gold dollars."

VI.

The invoice dated Madras, 31st. of August, 1898, contains a similar certificate by the same consular agent, dated the 1st. day of September, 1898.

VII.

The Secretary of the Treasury issued a circular, the material parts of which are as follows:—

"VALUE OF FOREIGN COINS.

"1898.

"Department Circular No. 124.

"Treasury Department, Bureau of the Mint,

WASHINGTON, D. C., July 1, 1898.

"HON. LYMAN J. GAGE,
Secretary of the Treasury;

"SIR; In pursuance of the provisions of section 25 of the Act of "August 28, 1894, I present in the following table an estimate of "the values of the standard coins of the nations of the world.

"Country.	Standard.	Mon. Unit.	Value in terms of U. S. gold dollar.	Coins.
India	Silver	Rupee	.199	Gold Mohur ($7.105) Silver: rupee and divisions

* * * * * * *

Appended to the estimates is the following foot-note:

"Value of the rupee to be determined by consular certificate.

"Respectfully yours,
"B. F. BUTLER,
"Acting Director of the Mint.

"TREASURY DEPARTMENT,
"Office of the Secretary,

"WASHINGTON, D. C., July 1, 1898.

"The foregoing estimate by the Director of the Mint, of the "value of foreign coins, I hereby proclaim to be the values of such "coins in terms of the money of account of the United States, to be "followed in estimating the value of all foreign merchandise ex-"ported to the United States on or after July 1, 1898, expressed in "any of such metallic currencies.

"L. J. GAGE,
"Secretary of the Treasury."

VIII.

On February 17, 1899, the Collector at the port of Boston, acting under instructions from the Secretary of the Treasury, liquidated the duty on said goods by converting into United States gold dollars the rupees of said invoices, at the rate of 32.11 cents for each rupee.

IX.

As liquidated in accordance with paragraph VIII, the total amount of the duty payable on said goods was $568.70.

X.

The importers having duly paid the amount of duties assessed by said liquidation of February 7, 1899, within ten days thereafter filed with the Collector at the port of Boston the following notice in writing, seasonably protesting against said liquidation :

" Received Feb. 17, 1899, Auditor's Office, Custom House,
" Boston.

" Boston, Feb. 17, 1899.

" Sir ;—We hereby respectfully protest against your assessment
" and liquidation of duties upon the tanned goat skins in 27 bales,
" marked various marks, imported by us in the ' Columbian ' from
" London, and entered for consumption on the eighteenth day of
" October, 1898, because you have assessed the *ad valorem* duty
" provided by law upon this merchandise, upon a value in United
" States currency arrived at by you by converting the silver rupee
" of the invoice, such being the standard coin currency of the coun-
" try of exportation, at a rate of value other and more than that esti-
" mated and determined by the Director of the United States Mint,
" and promulgated by the Secretary of the Treasury, as the value
" to be used in estimating the value of all foreign merchandise ex-
" ported to the United States at the time this merchandise was ex-
" ported, which action we contend was and is without any author-
" ity of law. On the contrary, under the laws of the United States
" applicable, we contend that the true and lawful value at which
" these rupees should have been converted to American money for

" the purpose of assessment of an *ad valorem* rate of duty upon
" this imported merchandise was that estimated and determined
" by the Director of the United States Mint; and promul-
" gated by the Secretary of the Treasury of the United States,
" for the quarter of the year within which these goods were ex-
" ported from the foreign country.

" We *submit under compulsion*, and, under the provisions of
" Sect. 25, Act of Aug. 28, 1894, claim to have all excessive duties
" paid refunded.

" No. of Entry.	Manifest No.	Bond No.	Date of Liquidation.
20,215.	2053		Feb. 17, 1899.

" Yours very respectfully,
LUCIUS BEEBE & SONS,
" WILLIAM CURTIS, Attorney."

XI.

The Assistant Secretary of the Treasury wrote the following letter to the Collector of Customs, Boston, Massachusetts;

" TREASURY DEPARTMENT,
" OFFICE OF THE SECRETARY,
" WASHINGTON, D. C., March 31, 1899.

" COLLECTOR OF CUSTOMS, BOSTON, MASS.

" SIR;—The Department is in receipt of your letter of the 20th.
" ultimo, transmitting the following described protest against your
" action in estimating the value of the India rupee in certain impor-
" tations from Madras, India, on the basis of the values shown in
" the U. S. Consular certificates attached to the invoices;

" Protest 111, of Messrs. Lucius Beebe & Sons, dated Boston,
" Feb. 17, 1899, importation 27 bales of tanned goat skins per
" 'Columbian', Oct. 18, 1898; entry liquidated Feb. 17, 1899.

" You submit the invoices Nos. 1610 and 1611, dated Madras,
" India, Aug. 11th. and September 1, 1898, respectively, for the
" inspection of the Department, and call attention to the fact that
" the United States Consular certificates attached thereto state
" that the exchange value of the rupee, in which currency the said
" invoices are made out, was, at the date of shipment, 32.11 cents,
" estimated in the U. S. gold dollars, and that inasmuch as said
" valuation, is more than ten per centum greater than the value of
" the India rupee as estimated by the Director of the Mint for the
" quarter covering said shipment, you have, following Department's
" ruling, Synopses 17,766 and 18,110, assessed duties on the basis
" of the valuation of the India rupee as certified by the U. S. Consul
" on said invoices.

" In reply I have to inform you that from an inspection of the " invoices, and of the U. S. Consular certificates attached thereto, " the Department is satisfied that the correct and true value of the " India rupee was, at the date of shipment of the said merchandise, " in fact more than ten per centum greater than that estimated by " the Director of the Mint for the quarter covering said shipments. " Your action in liquidating the entry on the basis of this higher " valuation for the India rupee is therefore hereby approved under " the authority conferred upon the Secretary of the Treasury by " section 25 of the Act of August 28, 1894.

" On behalf of the importers in this case, it has been " requested that the said protest, together with the accompany- " ing invoices, be returned to you with instructions to trans- " mit the same to the Board of General Appraisers for decision " under Section 14 of the Act of June 10, 1890, in order that an " early opportunity may be afforded to carry the question involved " into the United States courts, for decision. The Department has " acceded to this request, without, however, receding from the " views expressed in S. 17766, to the effect that the Board of Gen- " eral Appraisers is without jurisdiction in the matter.

" For the purposes stated the protest and invoices referred to " are herewith returned, and you are hereby directed to forward " the said protest # 111, with accompanying invoices, to the Board, " at your early convenience.

" Respectfully yours,

" O. L. SPAULDING,

" Assistant Secretary."

XII.

Thereafter, on the day of in pursuance of a judgment of the United States Circuit Court of Appeals, for the First Circuit, entered January 16, 1901, said Collector of the Port of Boston properly liquidated the amount of duties payable under said entry at the value of .199 cents for each rupee, as proclaimed in the Circular set forth in paragraph VII of this Agreement, the Treasury Department and the Collector proceeding as though no liquidation had theretofore been made, but failed to refund to the importers, Lucius Beebe & Sons, the excess of duty thereunder, for the reasons set forth in the following paragraph. The amount of duty thus assessed by said liquidation of the day of was $352.40.

XIII.

On the day of the Secretary of the Treasury wrote to the Collector at the port of Boston the following letter—

"TREASURY DEPARTMENT,
"Office of the Secretary,
"WASHINGTON.

"THE COLLECTOR OF CUSTOMS,
"Boston, Massachusetts.

"SIR:—The Department is in receipt of your letter of the " inclosing entry No. 20215 and invoices Nos. 1610 " and 1611, in the matter of certain merchandise imported by " Lucius Beebe & Sons at your port, invoiced in rupees, in " which you state that the entry has been liquidated on the basis " of the value of the rupee of India as proclaimed by the Secretary " of the Treasury for the quarter covering the shipment, viz.: 19.9 " cents.

"In this regard I have to inform you that satisfactory evidence " has been produced to the Secretary of the Treasury showing that " the value in the United States currency of the foreign money of " the invoice, namely, the rupee of India, was 32.11 cents at the " dates of certification, which is ten per centum more than the " value proclaimed during the quarter in which the consular certifi- " cation occurred.

"In view of the fact stated, you are hereby directed to reliqui- " date the entry hereinbefore mentioned on the basis of this latter " value, under the authority conferred upon the Secretary of the " Treasury by the proviso to section 25 of the act of August 28, 1894.

"The entry and other papers submitted are herewith returned.

"Respectfully,
"Assistant Secretary."

XIV.

The order for reliquidation set forth in the letter in the preceding paragraph was not based upon any difference between the pure metal value of the Indian rupee on August 11, 1898, and September 1, 1898, the dates respectively of consular certification of said invoices, and the value for said rupees of India contained in the Secretary of the Treasury's proclamation of value for the quarter commencing July 1, 1898, the quarter in which these exportations occurred; and the pure metal value of said rupees in terms of United States gold dollars on each of said dates of consu-

lar certification was substantially 19.9 cents, being the value thereof contained in said proclamation. And the value of 32.11 cents for the rupees of said invoices set forth in the letter in paragraph XIII was not intended to be the pure metal value of such rupees on said dates of certification.

XV.

In accordance with said letter, dated on the day of said Collector liquidated the duty on said goods by taking the rupees of said invoice at the value of 32.11 cents. The amount of duty thus assessed was $568.70.

XVI.

On the day of 1901 said Lucius Beebe & Sons, duly and seasonably filed with the Collector of the port of Boston the following notice in writing protesting against said reliquidation.

XVII.

The difference between the amount of duty payable under the original liquidation of February 17th. 1899, as approved by the letter of the Secretary of the Treasury of March 31, 1899, and the amount claimed to be due by the importers in their original protest dated February 17, 1899, and assessed under the liquidation of has not been repaid by the Collector, but is in the hands of the United States being also the difference between the amount of duty payable under the said liquidation of and the re-liquidation, dated Neither the Government nor the importers intend by the language of this paragraph, or the preceding paragraphs of this agreement, respecting liquidation and reliquidation, to make any agreement as to the legal effect of these successive steps.

XVIII.

The goods imported in this case are dutiable at the rate of ten per cent of their dutiable value, but no question is raised but that

the invoice sets forth correctly in rupees the dutiable value of said goods.

XIX.

The importers herein paid in India for the merchandise imported the purchase price of the same in rupees, and each rupee actually cost the said importers the sum of 32.11 cents through exchange purchased at the said City of Boston, but the importers contend that these facts are not material.

XX.

The rupee referred to herein, and in the invoices, being also the rupee named in the Quarterly Treasury Proclamations of value, is a silver coin, and is current in India as such. In addition to its currency as a coin, it is the usual money of account in commercial transactions in India.

Either side is at liberty to cite in argument the "India Coinage and Paper Currency Act" of September 15, 1899, and any other India coinage or currency act, and the Court may take judicial notice thereof, so far as the Court may deem the same material.

The protest referred to in paragraph XVI and the various dates admitted are to be supplied hereafter.

Executed by and on behalf of both parties at Washington, this 20th. day of July, 1901.

THE UNITED STATES OF AMERICA,
by

Assistant Attorney General.
LUCIUS BEEBE & SONS,
by

FILE COPY.

Office Supreme Court U.
FILED
NOV 16 1904
JAMES H. McKENNEY,
Clerk

413

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

UNITED STATES, PETITIONER,

v.

MORRIS WHITRIDGE ET AL.

BRIEF ON BEHALF OF LUCIUS BEEBE & SONS AND OTHER BOSTON IMPORTERS HAVING INTERESTS SIMILAR TO THOSE OF THE RESPONDENTS IN THE AFORESAID PETITION.

WILLIAM R. SEARS,
Counsel for Lucius Beebe et als.

ALDIS B. BROWNE,
ALBERT COMSTOCK,
Of Counsel.

THE ROCKWELL AND CHURCHILL PRESS, BOSTON.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

UNITED STATES, PETITIONER,

v.

MORRIS WHITRIDGE ET AL.

BRIEF ON BEHALF OF LUCIUS BEEBE & SONS AND OTHER BOSTON IMPORTERS HAVING INTERESTS SIMILAR TO THOSE OF THE RESPONDENTS IN THE AFORESAID PETITION.

The undersigned, counsel in other cases relating to the rupee of India, representing importers having like interests, ask to be allowed to file the following in reply merely to certain statements in the petition and brief filed by the Solicitor General. In so doing we wish to state our appreciation of the remarkably full, clear, and able presentation of the case contained in Mr. Comstock's admirable brief.

I.

In view of the argument of the petitioner, based on the large amount of money involved in this litigation and urged as a reason for granting the petition, counsel desire to point out certain aspects of the controversy, which they con-

fidently believe should convince the Court that no further delay should be imposed to the recovery of moneys which twelve decisions throughout a period of over eight years have declared that the importers are entitled to.

Until July, 1900, the following has been the form of proclamation, with reference to the rupee of India ·

Country.	Standard.	Monetary Unit.	Value in terms of U.S. Gold Dollar.	Coins.
India	Silver	Rupee		Gold: mohur (7,105). Silver: rupee and divisions.

"Treasury Department, Office of the Secretary,
Washington, D.C.

"The foregoing estimate by the Director of the Mint of the value of foreign coins I hereby proclaim to be the values of such coins in terms of the money of account of the United States, to be followed in estimating the value of all foreign merchandise exported to the United States on or after . . . expressed in any of such metallic currencies.

"(Signed)

"*Secretary of the Treasury.*"

No value has been placed in the space beneath the value in terms of U.S. Gold Dollar, because such value varied slightly with each proclamation.

When, in Mr. Cleveland's second administration, the exchange value of the rupee became substantially greater than its proclaimed bullion value, the Treasury Department, under Assistant Secretary of the Treasury Hamlin, required importations invoiced in silver rupees to be originally liquidated at the exchange value of the rupee, as certified by the consul. On protests being filed by the importers, the Treasury Department then required the collectors instead of

sending the protests to the Board of Appraisers to send them to Washington, under the claim that the Board of Appraisers had no jurisdiction over the matter in controversy. This practice continued until after the decision of the Circuit Court in the Beebe case in the fall of 1900, when the department abandoned this practice and ordered all subsequent entries to be liquidated at the proclaimed value of the rupee, and thereafter ordered reliquidation at the exchange value. In the spring of 1901, after the denial of the writ of certiorari in the Supreme Court in the Beebe case, fearing the effect of the one year statute of limitations, 18 Stat., 173, 176, the Treasury Department ordered all entries entered within one year, and which had been liquidated at the exchange value in the first instance, to be reliquidated at the proclaimed value. The entry in question is one of this class. *The other entries liquidated at the exchange value have never been reliquidated; the protests are still in the possession of the Treasury Department.* Although admittedly the government had no right to liquidate these importations at the exchange value of the rupee in the first instance, irrespective of the meaning of the proviso, the result was that by this means the government was enabled to compel importers to pay the duties at the greater value before they could obtain their merchandise, while if the proclaimed value had been followed the importers could have paid duties which they admitted were due, received probably their goods, and then on a reliquidation being ordered, have filed their protests and allowed the matter to rest until the government cared to send the protests to the Board of Appraisers, U. S. *v.* Goldberg, 168 U.S. 95. The hardship is apparent. The importers, without an opportunity to be heard or to obtain redress, have been obliged to pay duties at a rate admittedly at best in the first instance illegal, and have suffered the consequent

loss of interest on their money for a period varying from four to eight years, as the case may be.

The first of the protests to reach the courts, The United States *v.* Newhall (a protest against the liquidation by the collector at the exchange value of the rupee), seems to have escaped the watchfulness of the Treasury Department. It was tried in the Circuit Court on an elaborate stipulation of facts, and the scope and effect of the proviso of Section 25 of the Tariff Act of 1894 is discussed by Judge Colt in a masterly opinion which is annexed to Mr. Comstock's brief, and is as clear and lucid an exposition of the subject as is contained in any of the later decisions. *The United States took an appeal, but afterwards abandoned it*, without acceding to the importers' contention. Thereupon the Boston importers desiring to have their other cases heard, and met by the situation that their protests had been sequestered by the Treasury Department, applied to Secretary Gage and General Spaulding to send their protests to the Board of Appraisers. The result of the application, as the Boston importers claim, was that the Beebe case was selected as a test case and sent to the board for its decision. The history of the Beebe case is fully, clearly, and correctly set out in Mr. Comstock's brief, and it is useless to repeat it here. After the denial of the petition for certiorari upon a record of the government's own choosing, a stipulation in the case was carefully prepared by the Solicitor General and counsel for the importers with a view to obtain the opinion of the Court on the meaning of the word "value" in the proviso. The stipulation answered its purpose. Although the decision of the Court of Appeals was rendered in favor of the importers nearly two years ago, no petition for certiorari has been filed. The importers now feel that in view of the entire unanimity of the courts, including two concurring

decisions in the United States Circuit Court of Appeals in the first and fourth circuits, in view of the fact that the government has twice been defeated and abandoned similar cases in which this precise issue is involved (*i.e.*, Newhall and Beebe cases), that unless the matter is one of great doubt as to the correctness of the decisions of the lower courts in these cases, the importers should not be subjected to any further delay in the settlement of their protests, and they respectfully ask the Court to consider that in order to obtain their goods, in most instances, they have been obliged to pay duties at a rate which every Court thus far has decided was illegal, and in no event will ever be entitled to recover interest on their money.

The petitioners' estimate of the amount involved, moreover, does not take into consideration the fact that a very great majority of the protests now pending are against liquidation at the exchange value of the rupee in the first instance, a course which the government now deems to be illegal (see T.D. 22511), and any attempt to take any further proceedings after the reliquidation at the proclaimed value of the rupee will undoubtedly be contested by the importers. (See Sect. 21, act of June 22, 1874; 18 statutes, 186–190. See also reference in petition of government, U. S. *v.* Beebe, at page 7; see also end of opinion of Board of Appraisers, second trial, U. S. *v.* Beebe.)

Moreover, if the government means to maintain that any distinction should be based on the Indian Currency Act of Sept. 15, 1899 (see Petition, pages 14 and 15), the amount involved is comparatively trifling, probably but a few thousand dollars.

In October, 1900, the proclamation was changed. India was proclaimed to be on the gold standard, and the sovereign the principal coin. Since the importers generally have

acquiesced in this finding of the director, and no protests are being filed on Indian importations at the present time, the statement, therefore, in the petition that the issue is a present one would seem somewhat misleading.

II.

Page 24 of the petition contains the following statement: "No affirmative evidence shows in the present case that the secretary's instructions to the collector to liquidate the entry by valuing the rupee at 0.32 was not based on that coin's metallic value," and again on page 26, "The letter of the secretary ordering reliquidation of the entry in the present case, ante, page 5, shows that he intended to follow the proviso in Sect. 25, and no competent proof establishes that he acted in conflict therewith or adopted figures not based on metallic value."

The exact language of the order is as follows:

> "That satisfactory evidence has been produced to the Secretary of the Treasury showing that the value in United States currency of the foreign money of the invoices, viz., the rupee of India, was thirty-two cents at the date of the certification, which is ten per centum more than the value proclaimed during the quarter in which the consular certification occurred."

We are surprised in view of the unquestioned fact that, *as matter of fact*, the order for reliquidation was not based on any difference in bullion values of the rupee, a fact which the petition everywhere concedes, that the claim should be made, that *as matter of law* the secretary's order must be so construed. The question, then, before this Court is simply this: A controversy has existed for years between the

Treasury Department and the importers as to the meaning of a somewhat ambiguous phrase in a statute, the Treasury Department contending for one meaning, the importers for another, the latter being unanimously upheld in the courts. In this situation does the mere fact that the Secretary of the Treasury by repeating the language of the statute create a conclusive presumption that his finding is based on a construction of the statute which he has always contended was incorrect. We confidently submit that such a claim is on the face of it an absurdity.

There is obviously, therefore, no analogy between the action of the secretary in proclaiming the directors' estimate of coin value pursuant to the explicit direction of the body of the section and the action of the secretary in attempting to force importers to acquiesce in an illegal interpretation of the proviso. The body of the section is not ambiguous, it provides in clear and distinct terms the duty of the Director and the Secretary of the Treasury. Not even the Treasury Department would contend that it had the right to proclaim in the place of bullion value the exchange value of the coin.

> "This proviso was designed primarily to reach appreciated currencies, depreciations being provided for in Section 2903 of the Revised Statutes, but the words 'more or less' were used, and therefore depreciations likewise came within the terms of the proviso if amounting to ten per centum. The Secretary of the Treasury in ordering reliquidations is not limited to an ascertainment of the value of the pure metal of such coin of standard value as expressed in the money of account of the United States, his action being predicated upon a satisfactory showing of the value in United States currency of the invoice, not the coin, and independent of the pure metal contained therein. Any other interpretation renders nugatory the very purpose of the proviso,

viz.: to provide for appreciations and depreciations of currencies which could not possibly be stated by the Director of the Mint." Letter of General Spalding to Hitchings and Coulthurst Company.

The proclamation is conclusive because it purports to be, is declared to be, and is, an estimate of the bullion value of the coin, and unless this Court will construe, as a matter of law, the ambiguous language of the Secretary, admittedly referring to exchange value, to mean the pure metal value of the silver rupees of the invoice, it is submitted that this argument of the high prerogative absolutely falls to the ground.

As a matter of fact, however, construed in the light of previous acts and declarations of the Secretary of the Treasury, the letter is not even ambiguous, but clearly refers, not to a difference in metal values, but to a difference between the proclaimed metal value and the value in terms of exchange.

On Sept. 4, 1897, the secretary officially announced that the actual exchange value of the rupee, and not the proclaimed value, would be taken as a basis for estimating duties from India (T. D., 18327). In pursuance of this policy it directed its collectors to disregard the proclaimed pure metal value of the rupee and take the value certified by the consul (*i.e.*, the exchange value and expressly so declared in the consular certificate), and followed this by adding a footnote to the estimate of the Director of the Mint, "value of the rupee to be determined by consular certificate," although the body of the proclamation contained the estimate of the value of the pure metal of the coin. These rulings were in force when this shipment was made. The invoice in question bears the following consular certificate, Record 15 (fifth finding of fact):

"I further certify that the *exchange value* of the rupee, in which currency the annexed invoice of merchandise is made out, is at this date 32 cents, estimated in United States gold dollars."

Accordingly, on the 11th of July, 1900, the collector liquidated the duties by converting the silver rupees of the invoice at 32 cents for each rupee—the *exchange value* as certified by the consul (Record, 16). Against this liquidation the importers protested, on the ground that the proclaimed value should have been taken.

On Sept. 26, 1900 (T. D., 22511), the Treasury Department instructed collectors to disregard previous instructions of the Department (to liquidate according to the value stated in the consular certificate), and in future "you will be governed solely by the value proclaimed * * * for the quarter. * * * If such proclaimed value is *less than that shown by the consular certificate accompanying the invoices* you will report the fact immediately to this department, so that a reliquidation, should one be deemed necessary, may be ordered and the collection of the increased duties chargeable on such importations secured."

In other words, while adhering to its purpose of compelling importers to pay duties upon the basis of the exchange value certified by the consul, by this circular the Department announced its purpose of varying its procedure to reach that result, namely, to abandon liquidation at the exchange value in the first instance, but to reach the same result by an original liquidation at the proclaimed pure metal value and follow this up immediately by reliquidation at the exchange value certified by the consul.

On May 18, 1901 (T. D., 23059), the Department issued its circulars to the collectors as to all entries of merchandise

in rupees made within one year prior thereto, *not* liquidated at the proclaimed value, to reliquidate such entries at the proclaimed value. "Immediately thereafter (reliquidation) all the papers will be forwarded to the Department for such action as it may deem proper *in accordance with the instructions of Sept. 26, 1900.*" (Quoted above; *i.e.*, to reliquidate at the exchange value certified by the consul.) "*No refunds are to be made pending the receipt of further instructions from the Department.*" The papers accordingly were sent to the Department by the collector and on June 6, 1901, the Treasury Department returned them with a letter stating that satisfactory evidence had been produced to the Secretary of the Treasury showing that the value of the rupee was at the date of shipment thirty-two cents and directing a reliquidation accordingly.

Apparently no other evidence was produced to the secretary beyond the statement of exchange value in the consul's certificate. Apparently that was all the evidence the secretary wanted, from the tenor of his letter of Sept. 26, 1900, and apparently the only purpose of the secretary was by a different and roundabout procedure to restore the original liquidation of July 10, 1900, at the exchange value, and this was done. Admittedly the original liquidation was at the exchange value, and obviously the purpose of the order of June 6, construed in the light of the decisions of the Department regarding this very importation, was to restore that liquidation at the exchange value, and it did so. We confidently submit that the Board of General Appraisers could not have reached by any possibility any other result than it did, namely, that the order was not based on a difference in bullion values.

If any more affirmative evidence were required, we would respectfully call the attention of the Court to a letter written

regarding one of the very class of cases of which the case at bar is one, which would have been introduced in evidence had Mr. Comstock known of this instance at the time.

"TREASURY DEPARTMENT, OFFICE OF THE SECRETARY.
"WASHINGTON, April 4, 1901.

"Messrs. HITCHINGS & COULTHURST,
145 South street, Boston.

"GENTLEMEN: In reply to your letter of the 30th ultimo, further in regard to the reliquidation of entry of 17778, covering merchandise imported from India, and invoiced in rupees, I have to state that in cases of this character the appreciation of the money of the invoice is considered, and not, as you suppose, the appreciation of metal in the coin.

"Respectfully,
"(Signed) O. L. SPAULDING,
"*Assistant Secretary*,
"A. J.

"No enclosure."

III.

The petitioner contends (Petition, p. 27, paragraph 2) that the proviso gives the right to the secretary to substitute the exchange for the proclaimed value of a coin whenever he desires to do so. The attempted working of such a system is a practical demonstration of its fallacy. Thus for four or five years prior to the fall of 1900 the director of the mint had been estimating and the secretary of the treasury had been proclaiming the bullion value of the silver rupee of India in accordance with the provisions of the statute that requires that the "values so proclaimed shall be followed in estimating the value of all foreign merchandise exported to the United States during the quarter for which the value is proclaimed." Notwithstanding this statute, if the view of distinguished counsel for the government is correct, this proc-

lamation fixed nothing, for the secretary has the right to substitute in every case for the value of the rupee in the proclamation some other value independent of its coin value. Thus for years the proclamation of values of the Indian rupee has been absolute nullity, because the secretary has seen fit to act under the proviso. In other words, if the construction of the petitioner is correct, the secretary can, under the proviso, suspend the law.

It seems to be the argument of the petitioner and the contention of General Spaulding that the rupee was an appreciated currency, and that the purpose of the proviso to Sect. 25 was to provide for the assessment of duties in appreciated and depreciated currencies. It is inconceivable, however, that Congress, by the proviso to the Act of 1894, intended to cover such cases by introducing into that statute, *which dealt alone with metal values*, an authority by way of proviso which throws that controlling principle to the winds. Rather had Congress intended to provide for appreciated currencies, as the government's brief claims, this would readily have been accomplished by amending United States Revised Statutes, Sect. 2993, which now provides for a consular certificate to accompany invoices made in depreciated currencies, and under treasury regulations such certificate is made the basis of valuation. Thus Article 409 of the Treasury Regulations, Edition 1899, provides:

> "When invoices are made out in a paper currency which has become depreciated, the consul is instructed to verify the relative value of such currency as compared with the standard coin of the country of exportation, *the latter being the only currency recognized by the law*, and entries of such invoices must be reduced at the value so certified."

Such an amendment of Sect. 2903 would have reached correct values without requiring a 10 per cent. difference before the statute became operative; *furthermore, that method would, precisely as in the case of depreciated currency, have required no reliquidation or resort to proclaimed values*, and the importer could have told in advance on what basis he was to be obliged to pay duty. Indeed, if the theory claimed for the proviso in the Act of 1894 be correct, Congress adopted a most extraordinary method to reach such a plain and simple result.

IV.

On page 20 of the petition after a long quotation from the decision of Judge Putnam in the Beebe case before the Circuit Court of Appeals, the statement is made:

> "In view of the effect given the stipulation in the Beebe litigation, it seemed proper to submit the present case in which the government could finally present to this Court its exact contentions on all points,"

the inference being that the decision of the Court of Appeals proceeded from a misconception of the facts. As a matter of fact, however, an examination of the stipulation in the Beebe case, which was prepared by the present solicitor general, and signed by him, will show that the stipulation served the purpose for which it was intended, — to present the controversy between the importers and the government fully and clearly to the courts, and an analysis of the successive opinions by the Board of Appraisers, the Circuit Court, and the Circuit Court of Appeals will show that it fully served its purpose. A further quotation which appears on page 20 of the petition shows that the Court regarded the stipulation from the point of view most favorable to the government,

namely, "That the legal tender value of the rupee far exceeded its bullion value." Although these importers feel that had the government desired to petition for certiorari, fairness to them should have induced the Department of Justice to apply for the writ in the Beebe case, rather than in this case, and thus save a delay of almost two years, yet they feel confident that a careful examination of the record will show that the two cases are, in essential particulars, the same.

The writer has made no attempt to meet all the arguments of the petition, which are so fully and decisively answered in Mr. Comstock's brief, and in the opinions of the Court annexed to it.

We respectfully request that the petition be denied.

Respectfully submitted,

WILLIAM R. SEARS.

ALDIS B. BROWNE,
ALBERT COMSTOCK,
WHIPPLE, SEARS & OGDEN,
of Counsel.

Supreme Court of the United States.

No. 413.—October Term, 1904.

The United States, Petitioner, vs. Morris Whitridge and Richard J. White, trading as Whitridge, White & Company.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

[February 27, 1905.]

Mr. Justice Holmes delivered the opinion of the Court.

Whitridge, White & Co., the respondents, on June 18, 1900, imported from India certain gunnies, invoiced in rupees. The invoice contained a certificate from the American consul, dated April 19, 1900, that the exchange value of the rupee at that date was thirty-two cents estimated in United States gold dollars. For the purpose of ascertaining the *ad valorem* duties under the act of July 24, 1897, c. 11, (30 Stat. 151,) Schedule J., cl. 341, in July, 1900 the collector of the port of Baltimore estimated the value of the merchandise at the date of the consular certificate by converting the invoice value into dollars, taking the rupees at thirty-two cents. The importers entered protest and the collector reliquidated the entry, taking the rupee at 20.7 cents. The Secretary of the Treasury, on June 6, 1901, wrote that satisfactory evidence had been produced to him that the value of the rupee was thirty-two cents at the date of the consul's certificate, and directed a reliquidation at that rate. The collector of the port reliquidated accordingly on June 12, 1901. The importers (respondents) protested, and the matter was submitted to the Board of General Appraisers in New York. Act of June 10, 1890, c. 407, § 14. 26 Stat. 137. The board found that the exchange value of the rupee at the date of certification was thirty-two cents, but that the metal value was 20.7 cents, as estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury for the quarter year beginning April 1, 1900, ruled that the latter rate should have been taken, and directed a reliquidation on that footing. The collector appealed to the Circuit Court and then to the Circuit Court of Appeals, both of which sustained the Board of Appraisers. 129 Fed. Rep., 33. The United States then obtained a writ of certiorari from this Court. The question is whether the Secretary of the Treasury had power to order reliquidation at the rate of thirty-two cents.

There is, to be sure, a preliminary question as to the conclusiveness of the Secretary's action under the statute. Technically it does not appear that his decision was not based on a finding as to the metal value of the rupee; that is to say, as to the value on April 19, 1900, in fractions of a gold dollar, of the silver contained in the coin. If the decision were based on such a finding we may assume that it would not be open to review. *United States* v. *Klingenberg*, 153 U. S. 93. But the greater part, at least, of the argument was made on a different assumption, which, in view of our conclusion, we shall adopt. We do so the more readily, because upon the public and well-known facts it is not to be supposed that the imagined finding as to the value of silver was made, and the policy of the Treasury Department to adopt the exchange value of rupees was well-known and publicly declared. It would not be consistent with the honor of the Goverment to take the exchange value and then to cover itself from correction, if it was wrong, by suggesting that it had gone upon a different ground, when that ground could not have been taken by any one knowing the prices of the time. There is another argument for the conclusiveness of the Secretary's action which is so closely connected with the merits that we shall not separate it from our general discussion of the act.

The power of the Secretary depends on the construction of the act of August 27, 1894, c. 349, § 25. 28 Stat. 509, 552.* It is argued for the respondents that the Secretary must derive his power from the proviso if from anything, that the value dealt with in this section is the same thing throughout, and being declared to be that of the pure metal of the coin in the body of the section, must be the same in the proviso, and that therefore the Secretary is not authorized to order a reliquidation unless it appears to him that the pure metal in the invoice coin was worth ten per cent more or less in American gold than the value proclaimed. This argument is thought to derive some support from the history of legislation and

* "That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint, and be proclaimed by the Secretary of the Treasury immediately after the passage of this Act and thereafter quarterly on the first day of January, April, July, and October in each year. And the values so proclaimed shall be followed in estimating the value of all foreign merchandise exported to the United States during the quarter for which the value is proclaimed, and the date of the consular certification of any invoice shall, for the purposes of this section, be considered the date of exportation: *Provided*, that the Secretary of the Treasury may order the reliquidation of any entry at a different value, whenever satisfactory evidence shall be produced to him showing that the value in United States currency of the foreign money specified in the invoice was, at the date of certification, at least ten per centum more or less than the value proclaimed during the quarter in which the consular certification occurred."

from the history of the times, which latter is thought to show that fluctuations of silver bullion, not fluctuations of exchange values, were what Congress was likely to have had in mind. It is suggested further that the Government reading makes the proviso revolutionize the body of the section and the practice of a hundred years.

On the other side we start with the consideration that to an *ad valorem* tax it must be an object to ascertain the true value of the thing taxed at the time as of which it is taxed, and that the invoice price is referred to only to that end. The history of the statutes shows a series of continually closer approximations to it, and to our mind helps the contention of the Government, not that of the other side. The statutes began by fixing the rates for specified coins absolutely. Then, in 1873, they provided in the language of the first part of § 25, quoted above, for an annual estimate by the Director of the Mint and a proclamation. Act of March 3, 1873, c. 268, 17 Stat. 602. Rev. Stat. § 3564. In 1890 the estimate was required to be quarterly, instead of for the year. Act of October 1, 1890, c. 1244, § 52. 26 Stat. 567, 624. Finally, on August 27, 1894, the statute received its present form, with the proviso from which the Secretary derives his clearest grant of power. The general purpose of this proviso undeniably is to secure a closer approximation still. In construing it we must bear this obvious purpose in mind. While no doubt the grammatical and logical scope of a proviso is confined to the subject matter of the principal clause, we cannot forget that in practice no such limit is observed, and when, as here, we are dealing with an addition made in new circumstances to a form of words adopted many years before, the general purpose is a more important aid to the meaning than any rule which grammar or formal logic may lay down. *Georgia Railroad & Banking Co.* v. *Smith*, 128 U. S. 174, 181.

If the proviso were a separate subsequent act we should note that the case in which the Secretary is authorized to order a reliquidation is not confined in terms to a difference in the value of standard coins in circulation, but exists whenever there is such a difference in the value of the foreign money specified in the invoice. The invoice is required to be made out in the currency of the country of export or the currency actually paid, which may not be coins at all. Act of June 10, 1890, c. 407, § 2. 26 Stat. 131. It is true that the difference referred to in the proviso is a difference from the proclaimed value, and that the proclaimed value has reference to standard coins. Whether, in view of this fact and of Rev. Stat. § 2903, the words would cover a difference in value between paper expressed in terms of current coin and current coin, if paper were the currency shown by the invoice or the consul's certificate to be the currency to which the invoice referred, need not be considered. That question did not arise in *Cramer* v. *Arthur*, 102 U. S. 612. However that may be, suppose that the currency

mentioned in the invoice, although coined, was a token currency having by legislative fiat the value of a fraction of some current coin of universal worth, but itself having no such worth derived from the metal it contained. Such a token might vary in value much below or above the fraction of the coin by which it purported to be measured. Suppose that the value of the latter coin only had been proclaimed. It would be going far to say that the Secretary could not order a reliquidation upon a variance of more than ten per cent between the value of the token currency in the invoice and the proclaimed value of the governing coin.

The case last put is the case at bar, except that it is not admitted that the rupee was technically a mere token, and that the value of the rupee itself had been proclaimed, subject to a note—"value of the rupee to be determined by consular certificate." At that time, although it was not noted until a little later in the year by the Director of the Mint, India was on a gold basis. As the rupee had a legally fixed ratio to another coin also valued by the Director, the gold pound, it is plain that the value of the rupee as so much silver and its value as a fraction of a pound might fall apart and yet both be given by the Director's tables. It would be giving a very literal construction to the body of § 25 to say that it forbade the Secretary to take the fraction of the pound rather than the silver bullion as the measure of the value of goods, if the former represented the unit of actual cost. But, supposing that the fraction of the pound was the unit of cost, it seems to us that at least under the proviso, if not under the body of the section, the Secretary could order a reliquidation on the basis of the units actually used. It would be simply a correction in conformity with the truth and the actual meaning of the words of the invoice. The other argument for the conclusiveness of the Secretary's action, to which we referred at the outset, was that, for all that appears, this may have been what happened. The gold which the rupee represents is one shilling and four pence, or about thirty-two cents. But, as in this case the exchange value and the value as a fraction of a pound were the same, it does not matter to our decision whether we say that in such circumstances the action of the Secretary was conclusive or say that it was right.

We have shown that in our opinion the proviso, if not the body of § 25, would have warranted the action of the Secretary if it had been a later independent statute. We are of opinion that it is not to be construed differently because of its form. In addition to the considerations which we have mentioned, we are confirmed in our view by the facts which were known at the time. It is true that the most conspicuous recent event was the fluctuation in the value of silver. But the movement of silver, especially after the repeal of the Sherman Act, on November 1, 1893, (28 Stat. 4,) had been downward, and the proviso contemplated at least equally a possible rise in the foreign money with which it dealt. On

the other hand there was before Congress the Herschell report on the coinage of silver in India, of which six thousand copies had been ordered to be printed by a resolve of the Senate, concurred in by the House, 28 Stat., App. p. 5, and which had been printed in 1893. This report recommended the closing of the mints against the free coinage of silver, and predicted as a conseqence the divergence between the intrinsic value of the rupee and the value of its ratio to the pound as fixed, taken hypothetically as one shilling and four pence. It contemplated even a raising of the ratio as possible. The report was followed by the closing of the mints in the same year, and the result predicted came to pass. However small may have been the imports from India in 1894, the fact predicted by the Herschell report was one of the most striking incidents in the recent financial history of the world, and we cannot suppose that it was not considered when the proviso was passed. Before the date of this export gold was adopted as the standard, and the ratio of the rupee fixed at fifteen to one, or one shilling and four pence, in 1899. The exchange value did not change very much, remaining at near the conventional ratio, but the decline in bullion made the divergence referred to more marked. It was objected that some of the facts which we have mentioned were not proved in the case, but they are public facts, and when we are asked to declare that the Secretary exceeded his powers we have to consider what might have been before his mind.

As we have said, it would be only by a very literal construction of the earlier part of § 25, that the collectors would be bound to estimate the value of a cargo invoiced in rupees by the bullion of the rupee when in the invoice rupee meant a certain fraction of a pound. But, however that may be, we are of opinion that when the Secretary has satisfactory evidence of that state of facts, under the proviso he is authorized to order a reliquidation in order to make the value in United States currency correspond with the actual value of the goods. It is not necessary to consider any wider problems as to the power of the Secretary. We confine our decision to the particular case.

Decree reversed.

True copy.

Test:

Clerk Supreme Court, U. S.